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| Monday          | Tuesday    | Wednesday | Thursday        | Friday     |
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**NOTE:** As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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# reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

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## List of Public Laws

NOTE: A complete listing of all public laws from the second session of the 95th Congress was published as Part II of the issue of December 4, 1978. (Price: 75 cents. Order by stock number 022-003-00960-4 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, Telephone 202-275-3030.)

The continuing listing will be resumed upon enactment of the first public law for the first session of the 96th Congress, which will convene on Monday, January 15, 1979.

## Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.



**REMINDERS—Continued****Rules Going Into Effect Today.**

CSA—Grantee personnel management; policy and procedures on \$18,000 per year salary limitation; effective 1-10-79.  
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[Originally published at 43 FR 57890; 12-11-78]

USDA/FNS—Audits of certain FNS programs; interim regulations; effective no later than 7-1-79; comments by 3-30-79 ..... 59823; 12-22-78

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USDA/SEA—Competitive research grants for basic research in plant biology and human nutrition; submit proposals by 1-19-79 ..... 59030; 12-18-78

Competitive research grants for basic research in plant biology and human nutrition; submit proposals by 2-16-79 ..... 59030; 12-18-78

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National Cancer Institute advisory committees, review of contract proposals and grant applications, Bethesda, Md. and New Orleans, La. (open and closed), January 1979 meetings 59440—59441; 12-20-78

National Heart, Lung, and Blood Advisory Council and its Manpower Subcommittee and Research Subcommittee, Bethesda, Md. (partially open), 2-8 through 2-10-79 ..... 59440; 12-20-78

NFAH—Humanities Panel, Washington, D.C. (closed), 1-9 thru 1-12-79 and 1-19-79 ..... 59932; 12-22-78

Humanities Panel, summer stipends in sociology, Washington, D.C. (closed), 1-9 meeting to be held 1-8-79 ..... 59556; 12-21-78

[Originally published at 43 FR 58126; 12-12-78]

Media Arts Panel (production aid/radio) meeting to review and make recommendations on grants applications, Washington, D.C. (closed), 1-8 and 1-9-79 ..... 58875; 12-18-78

Museum Advisory Panel, Washington, D.C. (partially open), 1-16 and 1-17-79 ..... 59932; 12-22-78

Opera/Musical Theatre Panel meeting to review and make recommendations on grants applications, Washington, D.C. (partially open), 1-8 and 1-9-79 58875; 12-18-78

**Other items of interest:**

HEW/PHS—National Council on Health Care Technology, nominations for committee positions; nominations by 1-15-79.  
59442; 12-20-78

Justice/LEAA—National Institute of Law Enforcement and Criminal Justice; solicitation of proposals for research and evaluation methodology development ..... 59555; 12-21-78

**presidential documents****[3195-01-M]****Title 3—The President****Memorandum of December 22, 1978****Determination Under Section 202(b) of the Trade Act; Bolts, Nuts, and Large Screws of Iron or Steel****Memorandum for the Special Representative for Trade Negotiations**

THE WHITE HOUSE,  
Washington, December 22, 1978.

Pursuant to section 202(b)(1) of the Trade Act of 1974 (P.L. 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on November 3, 1978, concerning the results of its investigation of a resolution submitted by the Committee on Ways and Means of the House of Representatives. The USITC investigation pertained to lag screws or bolts, bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all of the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, 646.63, and 646.79 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those considerations set forth in section 202(c) of the Trade Act of 1974, I have determined that import relief in the form of 15 percent tariffs on iron or steel bolts, nuts, and large screws is in the national economic interest and therefore will proclaim this remedy. Under this remedy, tariffs will remain at 15 percent for large screws (including lag screws), 15 percent plus the current tariffs of 0.2 and 0.1 cent per pound, respectively, for bolts and nuts for a three-year period after which time they will revert to their current levels (which range from less than one percent ad valorem equivalent to 12.5 percent).

As required by statute, this relief must be implemented within 15 days of this determination.

The USITC recommended that tariffs on iron or steel bolts, nuts, and large screws be increased to 20 percent and staged down to 10 percent (except for lag screws where the tariff would revert to its current level of 12.5 percent) over a five-year period.

I have determined that the USITC remedy would not be an appropriate remedy for a number of reasons. The USITC remedy would substantially increase the cost of ferrous fasteners to U.S. consumers, thereby adding to inflationary pressures in the U.S. economy. Due to its shorter duration (three years versus five years as recommended by the USITC) and smaller tariff increases (15 percent versus 20 percent), the remedy I will proclaim will have a smaller inflationary impact on the U.S. economy, while still providing meaningful and necessary relief to the domestic fastener industry.

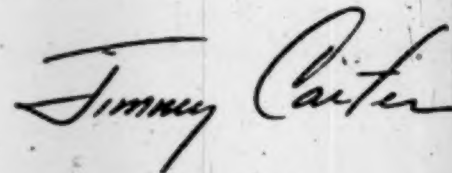
Given the recent increases in the prices of imported fasteners, the USITC remedy would be overly restrictive on the foreign countries that supply fasteners to the U.S. market. The smaller tariff increases that I will proclaim will mitigate the adverse impact of providing import relief on foreign suppliers of fasteners and on U.S. international economic interests.

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The tariff increase remedy I have chosen should enable many domestically produced fasteners to be competitively priced relative to imports. Thus, implementation of this remedy should prevent further erosion of domestic fastener production, shipments, and employment and allow domestic producers to increase their share of the U.S. fastener market by using currently idle capacity.

This determination is to be published in the FEDERAL REGISTER.



[FR Doc. 78-36239 Filed 12-26-78; 11:36 am]

## rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6210-01-M]

Title 12—Banks and Banking

### CHAPTER II—FEDERAL RESERVE SYSTEM

#### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y; Docket Nos. R-0132 and R-0151]

#### PART 225—BANK HOLDING COMPANIES

#### PART 265—RULES REGARDING DELEGATION OF AUTHORITY

##### Nonbank Activities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rules.

**SUMMARY:** The Board has adopted two related amendments to its regulations. The first rule changes the procedures for bank holding companies to obtain permission to engage in nonbank activities or to acquire shares or assets of companies engaged in nonbank activities, and clarifies the procedures governing the commencement of nonbank activities outside the United States. The rule dispenses with the present requirement that bank holding companies publish notice in local newspapers, in or outside the United States, of their intention to commence such activities or to acquire such shares or assets, and provides instead that the Board will publish such notices in the FEDERAL REGISTER. This action is taken to simplify nonbank application procedures and to make them more easily administrable and less burdensome. In conjunction with this action the Board has also made some technical amendments to its Rules Regarding Delegation of Authority to conform its references to the new procedures.

**EFFECTIVE DATE:** These rules will affect applications accepted by Reserve Banks after December 31, 1978.

##### FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel (202/452-3274), or James McAfee, Senior Attorney (202/452-3707), Legal Division,

Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

##### SUPPLEMENTARY INFORMATION:

(1) Sections 225.4(b)(1) and (2) of the Board's Regulation Y (12 CFR 225.4(b)(1) and (2)) require that bank holding companies publish a notice of any proposal to engage in nonbank activities under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), or to acquire or retain shares or assets of companies engaged in such activities, in newspapers of general circulation in the communities to be served. Several years' experience with this requirement, which is intended to provide notice of proposed nonbank expansion by bank holding companies to interested persons, indicates the required newspaper notices have not accomplished their intended purpose to an extent that justifies the burden they impose on bank holding companies. For that reason, the Board on June 29, 1978, published notice and invited public comment on a proposal to substitute FEDERAL REGISTER notice for newspaper notice of these applications, and to shorten slightly the comment period and normal processing times for *de novo* applications. 43 FR 29,796 (1978).

Upon consideration of the comments received in response to that proposal, the Board has adopted this final rule. It appears that the newspaper requirement has been both expensive and time-consuming and has not resulted in any significant volume of public comment on nonbank applications. The requirement that all communities to be served be specifically identified has also proved to be difficult to administer. Some comments have urged broader publication of notices, but there is no evidence that such a requirement would appreciably expand public participation in the application process. Under the circumstances, the Board believes FEDERAL REGISTER publication will afford adequate notice to interested parties. Giving notice in a single publication, rather than in various local newspapers, may materially assist competitors and trade associations representing competitors in receiving more timely and reliable notice of nonbank applications. The Board also publishes a summary of applications it receives each week, and this

publication (H.2) is available to interested parties without cost.

Some comments objected that the proposed 20-day comment period for *de novo* applications would be too short to be effective. In response to these comments the Board has restructured the application schedule originally proposed in order to permit a longer comment period for typical *de novo* applications without delaying unnecessarily action on applications that are not protested. In occasional cases it may be necessary to extend processing times for brief periods in order to accommodate the longer comment period, but it is expected that any delays that occur on that account will be offset by the time saved from the elimination of the requirement that bank holding companies publish newspaper notices and obtain proof of publication before filing their applications.

This rule eliminates the requirement that bank holding companies publish notices in communities to be served by their proposed nonbank activities. Bank holding companies should continue to describe their proposed activities clearly (not just by reference to a paragraph of Regulation Y), to identify the offices they intend to acquire or open, and to define specifically the geographic area they intend to begin serving within a reasonable time after approval of their application, normally one year, and they should include this information, together with any other information required by the Reserve Bank, in each application under these amended sections of Regulation Y. The opening of new nonbank offices not described in an application and the expansion into new geographic areas generally requires a new application by a bank holding company.

Some comments received were outside the scope of this rulemaking proposal. In particular, the Board considered that suggestions to eliminate notice and application requirements altogether for particular classes of nonbank acquisitions were not fairly noticed for comment. In addition, suggestions that particular Board forms be changed are being considered as those forms are periodically revised.

The rule as adopted is procedural in nature, and relieves a restriction. For those reasons it is not subject to the



provisions of 5 U.S.C. 553 relating to deferred effective date.

(2) On April 7, 1978, the Board published notice and invited comment on a proposal to eliminate the requirement of local newspaper notices in connection with *de novo* nonbank expansion outside the United States by bank holding companies. 43 FR 16,190 (1978). All comments received favored adoption of this amendment, but the proposal has been made moot by the Board's elimination of newspaper notices in connection with *de novo* nonbank applications.

A modified form of the proposed amendment has been adopted solely to clarify the fact that bank holding companies and their domestic nonbank subsidiaries may engage directly in approved nonbank activities outside the United States and may open offices there by complying with the procedures of § 225.4(b)(1) of Regulation Y. This procedure does not apply to the foreign direct activities of foreign bank holding companies or the foreign operations of bank holding companies conducted through foreign subsidiaries, matters governed by other provisions of Regulation Y. This clarifying amendment is an interpretative rule relating to agency procedure and is not subject to the provisions of 5 U.S.C. 553 relating to deferred effective date.

(3) In conjunction with this amendment to Regulation Y, the Board has also amended § 265.2(f)(20) of its Rules Regarding Delegation of Authority (12 CFR 265.2(f)(2)) for the sole purpose of conforming references in that section to the changes made in Regulation Y. This amendment has been adopted without following the provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section.

(4) These actions are taken pursuant to the Board's authority under sections 4(c)(8) and 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8) and 1844(b)), and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)).

#### § 225.4 [Amended]

1. Effective January 1, 1979, as to applications accepted by any Federal Reserve Bank on or after that date, § 225.4 of the Board's Regulation Y (12 CFR 225.4) is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

(b)(1) *De novo entry.* A bank holding company may engage *de novo* (or continue to engage in an activity earlier

commenced *de novo*), directly or indirectly, solely in activities described in paragraph (a) of this section, 45 days after the company has furnished its Reserve Bank a notice of the proposal (in substantially the same form as F.R. Y-4A), unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. The Board will publish in the FEDERAL REGISTER notice of any such proposal and will give interested persons an opportunity to express their views on the proposal to the Reserve Bank. If adverse comments of a substantive nature are received within the time specified in the notice, or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should be processed in accordance with the procedures of subparagraph (2) of this paragraph. With respect to activities to be engaged in outside the United States, the procedures of this subparagraph apply solely to activities to be engaged in directly by a domestic bank holding company or by domestic nonbank subsidiaries of any bank holding company. Paragraphs (f) and (g) of this section govern other international operations of bank holding companies.

(2) *Acquisition of going concern.* A bank holding company may apply to the Board to acquire or retain the assets of or shares in a company engaged solely in activities described in paragraph (a) of this section by filing an application with its Reserve Bank (Form F.R. Y-4). The Board will publish in the FEDERAL REGISTER a notice of any such application and will give interested persons an opportunity to express their views (including, where appropriate, by means of a hearing) on the question whether performance of the activity proposed by the holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

#### § 265.2 [Amended]

2. Effective January 1, 1979, as to applications accepted by any Federal Reserve Bank on or after that date, § 265.2 of the Board's Regulation Y (12 CFR 265.2) is amended by revising paragraph (f)(20) of that section to read as follows:

"If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

serve Bank on or after that date, § 265.2 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.2) is amended by revising paragraph (f)(20) of that section to read as follows:

(f) *Each Federal Reserve Bank* is authorized, as to member banks or other indicated organizations headquartered in its district:

(20) Under § 225.4(b)(1) of this chapter (Regulation Y), and subject to § 265.3 if a person submitting adverse comments that the Reserve Bank has decided are not substantive files a petition for review by the Board of that decision,

(i) To permit a bank holding company to engage *de novo* in activities specified in § 225.4(a) (or retain shares in a company established *de novo* and engaging in such activities) if its evaluation of the considerations specified in section 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) To notify a bank holding company that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures of § 225.4(b)(2).

(iii) To permit a bank holding company to consummate the proposal before the expiration of the 45-day period referred to in § 225.4(b)(1), because exigent circumstances justify consummation at an earlier time.

Board of Governors of the Federal Reserve System, December 18, 1973.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc. 78-35937 Filed 12-26-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0151]

#### PART 226—TRUTH IN LENDING

##### Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0151 of Regulation Z regarding the disclosures required in connection with certain interim student credit transactions. The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3867.

#### SUPPLEMENTARY INFORMATION:

(1) In FC-0151 the staff set forth criteria for determining whether loan or credit sale disclosures are required in connection with a federally insured program providing credit to students for educational purposes. The staff expressed the view that if a student has the option of receiving funds directly which may be used as the student sees fit, loan disclosures would be appropriate.

(2) FC-0151 was published on July 28, 1978, with an effective date of August 28, 1978. In response to a request for public comment submitted in accordance with § 226.1(d), the effective date was suspended and the interpretation was republished for public comment on September 11, 1978.

(3) Both the request for republication and the one comment received asserted that credit sale disclosures in connection with extensions of credit for educational purposes would be confusing to students who received the credit and would increase the cost of administering the credit program because of the necessity of maintaining stocks of disclosure forms for both credit sales and loans. It was indicated, however, that in connection with certain of such transactions students are not afforded the opportunity to obtain funds directly. Rather, credits are made to a student's account with the educational institution, which is extending the credit, and the student receives goods and services from the institution. It was argued that such a procedure is necessary to protect against fraud and to assure that the credit extended is being used for educational purposes.

After fully considering the arguments contained in the request for republication and the comment received, the staff continues to believe that FC-0151 correctly interprets Regulation Z. The staff does not believe that providing loan disclosures for a credit transaction in which a student receives goods and/or services from the educational institution extending the credit would comport with the regulation. Rather, where a student receives goods and/or services on credit, as opposed to funds the use of which the student controls, the transaction would constitute a credit sale and credit sale disclosures would be necessary.

(4) Official Staff Interpretation FC-0151, which follows, remains un-

changed, with the exception of language pertaining to its effective date, from the version published in the FEDERAL REGISTER on July 28, 1978. It is effective immediately.

(5) Authority: 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0151

§ 226.8(b) Under federally insured program providing credit to students for educational purposes, if student has option of receiving funds directly which may be used as the student sees fit, loan disclosures are appropriate.

§ 226.8(d) Under federally insured program providing credit to students for educational purposes, if student has option of receiving funds directly which may be used as the student sees fit, loan disclosures are appropriate.

DECEMBER 19, 1978.

This is in response to your letter of . . . in which you request an official staff interpretation of Regulation Z regarding the Truth in Lending disclosures which must be made in connection with certain interim student credit transactions made pursuant to a federally insured program. The staff believes that the primary issue which you raise is appropriate for an official response. Other questions asked in your letter will be addressed in a separate, unofficial staff interpretation of the regulation.

The program with which you are concerned consists of a fund from which extensions of credit are made by participating colleges and universities to students who meet the financial need criteria established by the Higher Education Act of 1965. Use of funds received under the program is restricted to expenses related to attendance at the institution which advances the funds, and the student must sign an affidavit affirming that the funds will be used only for such expenses.

Under the program, funds may be disbursed directly to the student or a credit may be made to the student's account at the educational institution. You are concerned that if a credit is made to a student's account with the institution and the student simply receives goods and services (e.g., tuition, room, board, books) from the institution, the transaction could be viewed as a credit sale rather than a loan, and credit sale disclosures rather than loan disclosures would be required under Regulation Z.

In the staff's opinion the answer to whether loan or credit sale disclosures are required in connection with the program you describe is dependent upon the ability of students participating in the program to obtain funds (e.g., cash or a check) from the institution if they so desire. As long as a student has the option of receiving funds directly which may be used as the student sees fit, the staff believes that the applicable loan disclosures under §§ 226.8(b) and (d) of Regulation Z would be appropriate. Furthermore, even though use of the loan proceeds is restricted to expenses related to attendance or continued attendance at the institution which makes the loan, as long as use of the funds is not restricted to the purchase of particular goods or services from the institution the staff feels that loan disclosures would be proper.

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of

the regulation. It will become effective December 28, 1978.

We also note that your client may be subject to the laws and regulations of the State of Maine which has been granted an exemption from the applicable provisions of Regulation Z. Therefore, you may wish to contact Mr. Harry Giddings, Acting Superintendent, Bureau of Consumer Protection, Department of Business Regulation, State House, Augusta, Maine 04330, for his views on the issue addressed in this letter.

Sincerely,

NATHANIEL D. BUTLER,  
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,  
Deputy Secretary  
of the Board.

[FR Doc. 78-35960 Filed 12-26-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0152]

#### PART 226—TRUTH IN LENDING

##### Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0152 of Regulation Z regarding methods by which creditors may disclose a hypothetical immediate rate increase in variable rate transactions. The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3867.

#### SUPPLEMENTARY INFORMATION:

(1) In FC-0152 the staff discussed the requirement of § 226.8(b)(8) of Regulation Z that, with regard to variable rate transactions, creditors disclose the impact on the number or amount of payments of a hypothetical immediate rate increase of one quarter of one per cent. The staff expressed the view that the hypothetical examples may be based on increases in the contract interest rate rather than increases in the annual percentage rate. The staff further stated that although the required examples must assume that the rate increase is immediate and in the specified amount, other examples showing the effects of rate changes at different times or in different



amounts may also be provided as additional information.

(2) FC-0152 was published on August 8, 1978, with an effective date of September 5, 1978. In response to a request for public comment submitted in accordance with § 226.1(d), the effective date was suspended and the interpretation was republished for public comment on September 22, 1978.

(3) The request for reconsideration raised four objections to the interpretation. These objections and the staff's responses to them are as follows:

(a) That the hypothetical examples should not be based on the simple interest rate because changes in interest rates may not always be the sole cause for annual percentage rate changes. Although interest is only one component of the finance charge, it is generally the largest component; furthermore, subsequent annual percentage rate increases are almost always caused by interest rate increases. Therefore the staff continues to believe that the results of changing the simple contract interest rate are almost equivalent to the results of changing the annual percentage rate and provides the reasonable estimate called for by the regulation.

(b) That it is unclear whether the interpretation applies only to mortgages or to all variable rate transactions. The interpretation deals with the requirements of subparagraphs (iii) and (iv) of § 226.8(b)(8) which, by the terms of the regulation itself, apply only to "transactions in which a security interest is taken in real property used or expected to be used as the customer's dwelling."

(c) That it is unclear whether the interpretation permits use of the term "interest rate" in the disclosures or simply permits calculations to be made based on interest rates. The staff believes that the disclosures should be phrased in terms of interest rates since it would be inaccurate to have the interest rate used in calculations, yet allow the results to be stated as if they represented changes in the annual percentage rate. Although the original interpretation included language indicating that disclosures should be made in terms of interest rates, in order to make that point clearer, the final sentence of paragraph 5 has been revised to substitute the words "in terms of" for the word "as."

(d) That inclusion of hypothetical rate changes other than the one mandated by § 226.8(b)(8) may constitute a *per se* violation of the regulation's provision concerning additional information. The staff believes that examples in addition to those required by the regulation can be presented in a fashion that is not misleading, confusing or contradictory, and that inclusion of them is therefore permissible.

(4) Official Staff Interpretation FC-0152, as revised, is effective immediately.

(5) Authority: 15 U.S.C. 1640(f).

12 CFR, Part 226, FC-0152

§ 226.8(b)(8) Variable rate hypothetical examples may be based on increases in contract interest rate rather than in APR (partially rescinds Letter 1232). Variable rate hypothetical examples must assume that rate increase is immediate and in specified amount; examples showing changes in different amounts or at different times may also be given as additional information.

DECEMBER 19, 1978.

This will reply to your letter of . . . in which you request clarification of Public Information Letter 1232, concerning the provisions of § 226.8(b)(8) with regard to variable rate mortgages. You ask staff to elaborate on methods creditors could use to determine the increased number of payments or the increased payment amount which would result from a hypothetical immediate increase in the annual percentage rate, in order to make the disclosures called for by § 226.8(b)(8) (iii) and (iv). Specifically, you ask whether Appendix B to Volume I of the Annual Percentage Rate Tables published by the Board of Governors can be used to make such calculations.

Use of the Board's tables is not required in order to comply with the regulation, but the tables do provide fairly simple methods for determining much of the information required to be disclosed under the regulation. Appendix B to Volume I of the tables describes a method of determining the amount of the finance charge and the amount of the level payment in cases where the annual percentage rate is known in a single advance transaction involving equal payments and equal payment periods. These formulas can be used to compute the information called for by § 226.8(b)(8)(iii).

For example, assume a loan with an amount financed of \$40,000, to be repaid in 360 monthly installments, with an annual percentage rate of 8 per cent. From the annual percentage rate tables we can determine that the finance charge per \$100 of amount financed is \$164.16. The total finance charge for this loan is \$65,664 (\$164.16 × 400 = \$65,664) and the level monthly payment would be \$293.51 ((\$65,664 + \$40,000) divided by 360). If we assume a hypothetical immediate increase of one quarter of one per cent in the rate, as called for in § 226.8(b)(8)(iii), we can determine from the tables that the finance charge per \$100 of amount financed at an annual percentage rate of 8 1/4 per cent is \$170.46. The total finance charge under this assumption would be \$68,184 (\$170.46 × 400 = \$68,184). The level monthly payment amount that would be required to amortize this hypothetically increased obligation would be \$300.51 ((\$68,184 + \$40,000) divided by 360 = \$300.51), and this figure may be disclosed pursuant to § 226.8(b)(8)(iii). Alternatively, the increase in the payment amount may be expressed as the difference between \$300.51 and \$293.51, or \$7.

Again, we would point out that use of the Board's tables and the calculation methods set out therein is not required in making Truth in Lending disclosures. You may,

however, find the method outlined in this letter of some assistance in determining the information required to be disclosed pursuant to § 226.8(b)(8)(iii). You should note that this method cannot be used to determine the information required to be disclosed pursuant to § 226.8(b)(8)(iv); use of Volume I of the Board's Annual Percentage Rate Tables requires that you know the number of payments involved, and that is the information that must be calculated.

This information can, however, be estimated in another way. Changes in the annual percentage rate in variable rate mortgages are generally caused by changes in the simple contract interest rate. Since the results from changing the simple contract interest rate on most long-term mortgages are almost equivalent to the results from changing the annual percentage rate, and since § 226.8(b)(8)(iv) calls for a statement of the estimated increase in the number of payments, it is staff's opinion that a creditor may use tables based on simple interest rates to calculate the increased number of payments that would result if the interest rate were increased by one quarter of one percentage point. This approach yields an estimated figure that may be disclosed pursuant to § 226.8(b)(8)(iv). This approach may also be used, as an alternative to that outlined above, to determine the information called for by § 226.8(b)(8)(iii). To the extent that Public Information Letter 1232 states that the disclosures required by § 226.8(b)(8) (iii) and (iv) may never be made by reference to the contract interest rate, it is hereby rescinded. If this calculation approach is taken, the disclosures should be expressed in terms of the effects of a one quarter of one per cent increase in the interest rate.

Staff would like to point out that the alternatives expressed in this letter do not prohibit a creditor from basing its calculation on an increase in the annual percentage rate itself, which, we understand, is a calculation that can be made relatively simply on inexpensive calculators that are general available on the market. The procedures outlined in this letter are merely viewed by staff as reasonable alternatives.

You point out in your letter that lenders frequently do not have the authority under applicable statutes or the underlying contract to increase rates immediately. Rather, you believe that most lenders are required to wait a specified period of time before effecting a change. Moreover, you point out that changes in the rate may often be in increments less than the hypothetical one quarter of one per cent mentioned in § 226.8(b)(8) (iii) and (iv). You ask, therefore, whether creditors may provide additional examples of rate changes pursuant to § 226.8(c). We assume that what you wish to disclose are examples of the effect of rate changes occurring at a time later than consummation of the loan as well as rate changes greater than or less than one quarter of one per cent.

The disclosures called for by § 226.8(b)(8) (iii) and (iv) must be made on the assumptions (1) that the rate increase takes effect immediately upon consummation, and (2) that the increase is in a certain amount, i.e., one quarter of one per cent. Although creditors may not effect an increase in that particular amount or at that particular time, the regulation requires that disclosures be made on these assumptions in order to ensure uniformity among lenders and to facilitate comparisons. If a creditor wishes to provide further examples of the effect of a rate change in a different amount or at a different time in the loan term, this may be done as additional information pursuant to § 226.8(c), provided the additional examples are not stated so as to mislead or confuse the customer or contradict, obscure, or detract attention from the required information.

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of the regulation. It will become effective December 27, 1978.

Sincerely,

NATHANIEL E. BUTLER,  
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.  
(FR Doc. 78-35961 Filed 12-26-78; 8:45 am)

[6210-01-M]

[Reg. Z, FC-0149]

## PART 226—TRUTH IN LENDING

### Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0149 of Regulation Z regarding § 226.7(a). The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667.

SUPPLEMENTARY INFORMATION: (1) In FC-0149, the Board staff stated that "single written statement", as that phrase is used in § 226.7(a) of Regulation Z does not mean that initial open end disclosures must be placed on the same side of a single sheet of paper.

(2) FC-0149 was published on June 20, 1978, with an effective date of July 20, 1978. In response to a request for public comment submitted in accordance with § 226.1(d)(3) of Regulation Z, the effective date was suspended and the interpretation was republished for public comment on August 29, 1978.

(3) The request for republication argued that initial disclosures should be placed on one side of a sheet of

paper. This position was based primarily on the argument that adoption of FC-0149 might result in confusing and inconspicuous disclosures, especially since a notice similar to that mandated by §§ 226.7(a)(9), 226.7(c), and 226.801 was not required by the interpretation.

The vast majority of the 25 comments received did not agree with the arguments detailed in the request for republication and, instead, supported the interpretation as originally published. Several commenters pointed to the regulatory language difference between §§ 226.7(a) and 226.8(a), the difference in the type of disclosures contemplated by those two regulatory sections (i.e. narrative as opposed to numerical), the advent of plain English laws, and the institution of more elaborate open end credit plans as support for their position that placement of the disclosures on one side of a sheet of paper would result in a lengthy, fine-print disclosure statement. Upon reviewing the arguments contained in the request for republication, as well as the comments received, the staff continues to believe that FC-0149 correctly interprets § 226.7(a) of Regulation Z.

(4) Official staff interpretation FC-0149, which follows, remains unchanged, with the exception of language pertaining to its effective date, from the version published in the FEDERAL REGISTER on June 20, 1978. It is effective immediately.

(5) Authority: 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0149  
§ 226.7(a) "Single written statement" does not mean that initial open end disclosures must be placed on the same side of a single sheet of paper.

DECEMBER 19, 1978.

This responds to your . . . letters requesting official staff interpretations of §§ 226.4 and 226.7 of Regulation Z. This letter answers your final question; your other questions will be dealt with in a separate letter.

You ask whether the initial open end credit disclosures required by § 226.7(a) can be set forth on two sides of a single sheet of paper. Section 226.7(a) provides that disclosures be made on a "single written statement." You note that, in contrast to that section, § 226.8(a), relating to credit other than open end, expressly requires that disclosures be made "on the same side of the page" or on "one side of a separate statement." Thus, you argue that a creditor would be permitted under § 226.7(a) to place the required disclosures on the front and the reverse sides of a page.

In the staff's opinion, the language "single written statement" does not mean that the initial open end credit disclosures required by § 226.7(a) must be placed on the same side of a single sheet of paper. Consequently, a creditor would not be prohibited from using the front and the reverse of "a single written statement."

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of

the regulation. It will become effective December 28, 1978.

I note that you may represent creditors subject to the laws of the State of Connecticut. Since Connecticut has been granted an exemption from the applicable provisions of the Truth in Lending Act, you may wish to contact the office of Mr. David H. Nelditz, Bank Commissioner of the State of Connecticut, for his views.

I trust that these official comments satisfactorily answer your inquiry. If you have other questions in the future, please feel free to contact Mr. Edward F. Kipfatuhl, Manager, Consumer Affairs and Regulations Department, at the Federal Reserve Bank of New York, New York, New York 10045.

Sincerely,

NATHANIEL E. BUTLER,  
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.  
(FR Doc. 78-35959 Filed 12-26-78; 8:45 am)

[6210-01-M]

[Docket No. R-0191]

## PART 265—RULES REGARDING DELEGATION OF AUTHORITY

### Organizational Changes

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to reflect recent organizational changes, the Secretary of the Board has approved a technical and conforming amendment to the Board's Rules Regarding Delegation of Authority.

EFFECTIVE DATE: October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3257).

SUPPLEMENTARY INFORMATION: The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date are not followed in connection with the adoption of the amendment, because the change involved is procedural in nature and does not constitute substantive rules subject to the requirements of that section.

Effective October 17, 1978, § 265.2(j) is deleted and § 265.2(d) is amended as follows:



§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(d) The Staff Director for Federal Reserve Bank Activities or the Staff Director's designee is authorized:

(3) Under the provisions of the third paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 413), to apportion credit among the Reserve Bank for unfit notes that are destroyed, giving consideration to the net number of notes of each denomination that were issued by each Reserve Bank during the preceding calendar year.

(4) Under the provision of §§ 216.5(b), 216.5(d), and 216.6 of this chapter (Regulation P), with respect to Federal Reserve Banks and branches.

(i) To require reports on security devices;

(ii) To require special reports; and  
(iii) To determine in view of the provisions of §§ 216.3 and 216.4 whether security devices and procedures are deficient in meeting the requirements of Part 216, to determine whether such requirements should be varied in the circumstances of a particular banking office, and to require corrective action.

(5) To approve or disapprove supplementary budget requests and special incentive programs to improve operations or reduce costs, provided that the Board has previously approved the budget of the requesting Reserve Bank and provided that the supplemental request adheres to the Board's general expense guidelines and such guidelines as the Board may have imposed in approving the Reserve Bank's budget. And provided, That the amount approved may not exceed in any budgetary year one hundred thousand dollars (\$100,000) for each Reserve Bank and seven hundred fifty thousand dollars (\$750,000) for all Reserve banks in the System.

Board of Governors of the Federal Reserve System, November 30, 1978.

THEODORE E. ALLISON,  
Secretary of the Board.

[FR Doc. 78-35958 Filed 12-26-78; 8:45 am]

## RULES AND REGULATIONS

[6714-01-M]

### CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

#### PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

##### Avoiding Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: These provisions amend FDIC regulations relating to employee conduct and are designed to avoid conflicts of interest or the appearance of conflicts. The amendments (1) prohibit senior policy makers from obtaining certain credit; (2) establish guidelines concerning ownership of bank-related securities; (3) eliminate disclosure requirements for certain financial interests owned by an employee's spouse or dependent; (4) greatly increase the number of employees required to file disclosure statements; (5) establish formal guidelines for processing these statements; and (6) unite in one regulation the various disclosure systems employed by the FDIC.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Rosen, Attorney, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429 (202-389-4637).

SUPPLEMENTARY INFORMATION: On June 30, 1978, (43 FR 28518) FDIC published these amendments as a proposed regulation, inviting public comment on or before July 31, 1978. Due to delays in distribution, many FDIC field employees did not receive the proposal until near the close of the comment period. Since the proposal impacted directly on employees, and their fullest participation in the rule-making was desired, the comment period was extended until September 15, 1978 (43 FR 36461).

Based on comments received, staff review of those comments, and the recent enactment of the "Ethics in Government Act of 1978", several changes have been made. Section 336.735-11(b)(5) introduces new loan prohibitions for regional counsel and executive personnel. Paragraph (iv) has been revised in the final regulation to deal with obligations which these employees obtained prior to the new prohibition. Where it can be done without undue financial hardship, the obligation should be removed and other suitable arrangements made. However, in some cases employees may have obtained loans years ago at

more favorable rates. In such cases, the Ethics Counselor may grant permission to repay the obligation according to its existing terms (without renegotiation), provided the employee is disqualified from any decisions which may directly or indirectly affect that lender.

Under previous regulations, ownership of insured bank stock had to be approved by the Board of Directors. Under these new regulations, the Ethics Counselor will be making these determinations. Footnote "2" to § 336.735-13 makes clear that employees who have obtained Board approval of ownership of bank stock need not obtain additional approval from the Ethics Counselor.

Section 336.735-13(a)(2) establishes the basic rule that employees may not purchase directly or indirectly any securities of an insured bank or its affiliates while employed by the Corporation. The final regulation varies from the proposal by providing one very limited exception to this general rule. Exercising preemptive rights is a purchase of securities. However, preemptive rights are designed to preserve a status quo and to prevent a "squeezing out" by other shareholders, and generally are not used to increase one's proportionate interest. In very unusual cases, an employee with an ownership interest that has already been approved may be permitted to exercise preemptive rights. This permission would have to be granted by the FDIC Board of Directors.

Under the proposed regulation, the Ethics Counselor could permit an employee to retain securities of an insured bank or affiliate if they were obtained prior to employment or through circumstances beyond his or her control (such as inheritance). Since only bank stock required approval under previous regulations, employees may have obtained other securities in a manner permitted at the time of acquisition but prohibited by the proposed rule. Accordingly, the final rule adds a new paragraph (iii) in § 336.735-13(a)(3) to permit employees, with the consent of the Ethics Counselor, to retain interests which were not prohibited by prior regulations, provided the employee is disqualified from participating in any matters relating to the interest.

Previous FDIC policy required examiners who obtained loans from banks not examined by FDIC (national banks and other member banks of the Federal Reserve System), which subsequent to the date of the loan became affiliated through merger or acquisition with banks examined by FDIC, to remove the loan. Since the loan was permissible when obtained, the Ethics Counselor may now, under § 336.735-13(a)(7), permit an examiner

to retain the loan when refinancing would cause undue financial hardship. In such cases, the examiner will pay the loan according to its existing terms, without renegotiation, and be disqualified from examining any affiliates of the lender. Where a loan can be refinanced without undue financial hardship, the Ethics Counselor will continue to require removal.

Sections 336.735-2, 336.735-31a, 336.735-32, 336.735-35, and 336.735-40 are amended to reconcile FDIC's policy on disclosure with the requirements imposed by the new "Ethics in Government Act of 1978". Thus, employees paid at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16 shall file disclosure statements required under the Act rather than statements of employment and financial interests required under Part 336 of FDIC's regulations. Furthermore, an employee under Part 336 is no longer required to disclose all employment and financial interests of "members of his or her household". Instead, an employee is required to disclose only those financial interests of his or her spouse and "dependent" children which are derived in some way from his or her resources, or from which he or she receives or expects to receive economic or financial benefit. This parallels the approach taken by the "Ethics in Government Act of 1978".

Section 336.735-41(a) provides that the Ethics Counselor may be assisted in his or her review of annual disclosure forms by Deputy Ethics Counselors. Several employees raised questions about the confidentiality of the forms. FDIC will treat these disclosures as confidential. To help ensure confidentiality, a suggestion by the Washington Office Employee Advisory Council to limit the number of Deputy Ethics Counselors assisting in the review to no more than two, has been incorporated in this section.

The remaining changes from the proposed regulation are technical adjustments, not requiring additional comment. A delayed effective date is being dispensed with because the annual filing is already overdue, and it is in the public interest to proceed as quickly as possible with implementation of this disclosure system. Accordingly, Part 336 of 12 CFR is amended as set forth below.

By Order of the Board of Directors,  
December 20, 1978.)

FEDERAL DEPOSIT INSURANCE CORPORATION,  
ALAN R. MILLER,  
Executive Secretary.

1. In § 336.735-2, revise paragraph (d) and add paragraphs (e) and (f) as follows:

#### § 336.735-2 Definitions.

(d) "Special Corporation employee" means any employee serving with or without compensation for up to 130 days during any period of 365 days on a full-time or intermittent basis.

(e) "Affiliate" shall have the meaning described in 12 U.S.C. 1828(j).

(f) "Dependent child" of an employee means a son, a daughter, a stepson, or a stepdaughter of an employee who is either unmarried and under age 21 and is living in the employee's household, or who received over half of his or her support from the employee in the preceding calendar year.

#### § 336.735-3 [Amended]

2. In § 336.735-3, in paragraph (b) substitute "Office of Personnel Management" for "Personnel Division", amend paragraph (c) by changing "A Counselor" to "An Ethics Counselor", "Deputy Counselors" to "Deputy Ethics Counselors", and "Personnel Division" to "Office of Personnel Management"; and in paragraph (d) change "Counselor" to "Ethics Counselor".

3. In § 336.735-11, retitle and revise paragraph (b)(5) to read as follows:

§ 336.735-11 Gifts, entertainment, favors, and loans.

(b) . . .

(5) To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans, except that:

(i) A Corporation examiner or assistant examiner may not accept any gratuity from, or accept or become obligated on any extension of credit (including credit extended through the use of a credit card) by an insured State nonmember bank or its affiliate.

(ii) An attorney assigned to one of the Corporation's Regional Offices may not accept any gratuity from, or accept or become obligated on an extension of credit by an insured State nonmember bank or its affiliate whose principal place of business is within the region in which the attorney is employed.

(iii) An assistant or deputy to the Board of Directors or its individual members, Division or Office heads who report directly to the Board of Directors or the individual members thereof, and the holder or holders of the position immediately subordinate to these Division or Office heads may not accept any gratuity from, or accept or become obligated on an ex-

tension of credit by an insured State nonmember bank or its affiliate.

(iv) The prohibitions described in subdivisions (ii) and (iii) of this subparagraph shall not apply to credit extended through the use of a credit card: *Provided*, That the credit card is not issued by an insured State nonmember bank. An employee with an obligation now prohibited by subdivisions (ii) or (iii) of this subparagraph, which was not prohibited at the time of acquisition, will remove the obligation unless the Ethics Counselor determines that removal would be an undue hardship for the employee. In such cases, the obligation will be paid according to its existing terms without renegotiation, and the employee will be disqualified under § 336.735-13a from participating in any decision having an economic impact on the lender, or any insured State nonmember bank which is affiliated with the lender.

4. Retitle and revise § 336.735-13 to read as follows:

§ 336.735-13 Financial interests and obligations.

(a) No employee shall have a direct or indirect financial interest or obligation that conflicts, or appears to conflict, with the employee's duties and responsibilities to the Corporation. To avoid conflict or the appearance of conflict:

(1) No employee may own or control, directly or indirectly, any securities of an insured bank or its affiliates without full disclosure to and the approval of the Ethics Counselor as set forth in subparagraph (3) of this paragraph.<sup>1</sup> Disclosures will be made in accordance with § 336.735-13a(b).

(2) No employee may purchase, directly or indirectly, any securities of an insured bank or its affiliates while employed by the Corporation, except that an employee may exercise preemptive rights in approved interests upon obtaining the consent of the Board of Directors.

(3) The Ethics Counselor may grant an employee approval to retain a direct or indirect interest in the securities of an insured bank or its affiliates if the employee's interest is considered so small as to not compromise the employee's integrity and judgment and:

(i) The interest was obtained before employment with the Corporation; or

<sup>1</sup>This paragraph includes an individual holding any of the positions on an "acting" or "temporary" basis.

<sup>2</sup>Under previous regulations, the Board of Directors approved direct or indirect ownership of stock in insured banks. Employees who have received Board approval need not obtain the approval of the Ethics Counselor to retain their interest.



(ii) The interest was obtained through circumstances beyond the employee's control, such as, but not limited to, inheritance, gift, or the acquisition by an insured bank or its affiliate of a non-bank entity in which the employee owned securities; or

(iii) The interest was obtained at a time when previous regulations or policy did not prohibit such interest.

(4) Any employee whose ownership or controlling interest has been approved by the Ethics Counselor under subparagraph (3) of this paragraph, or by the Board of Directors, will be disqualified under § 336.735-13a from participating in any decision which could have an economic impact on the bank in question, or any affiliate thereof.

(5) In cases where the Ethics Counselor's approval is not granted, the employee will be required to divest himself or herself of the interest within a reasonable period of time. The time period will be long enough to ensure that the employee does not suffer undue financial hardship as a result of the divestiture. An employee may also obtain review of a denial of approval by the Ethics Counselor prior to any divestiture by requesting such review within 15 days of the denial. This review shall be made by the Chairman of the Board of Directors.

(6) No employee may engage, directly or indirectly, in a financial transaction where information regarding the transaction has been obtained primarily through his or her Corporation employment, unless the information is also in the public domain.

(7) In the event a merger, acquisition, or other transaction results in the existence of a credit extension prohibited by § 336.735-11(b)(5)(i), (ii), or (iii), the obligation will be removed unless the Ethics Counselor determines that removal would be an undue hardship on the employee. In such cases, the obligation will be paid according to its existing terms, without any renegotiation, and the employee will be disqualified under § 336.735-13a from participating in decisions having an economic impact on the lender, or any affiliate of the lender. If the employee is an examiner or assistant examiner, he or she will not be permitted to examine the lender or an insured State nonmember bank affiliated with the lender.

(8) An examiner or assistant examiner may become obligated on any extension of credit (including credit extended through use of a credit card) by a bank other than an insured State nonmember bank if—

(i) The lending bank is not affiliated with an insured State nonmember bank; and

\*For purposes of this paragraph, a blind trust may be a form of divestiture. However, the blind trustee must not be related by blood or marriage to the employee and must not be an insured bank or an affiliate of an insured bank.

(ii) Full disclosure of the obligation and the date the obligation is fully repaid is made in writing to the Regional Director on an official Corporation form designated for this purpose. The Regional Director shall also be notified of the repayment of the obligation. In the case of a bank credit card, these disclosure requirements are met if the Regional Director is notified in writing of the date of receipt of the card, the name of the bank acting as principal, and the date of the discontinuance if the card is destroyed or returned to the bank. Regional Directors will forward copies of the disclosures by examiners or assistant examiners to the Ethics Counselor.

(b) This § 336.735-13 does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Corporation so long as the specific activity is not prohibited by law, the Executive Order, this § 336.735-13 or other provisions in this Part 336.

(c) Despite the restrictions in § 336.735-13(a), an employee may own shares in a publicly held mutual fund whose investments are primarily in the securities of nonfinancial corporations. This indirect financial interest in securities of a bank or other financial institution is considered too remote and inconsequential to affect the integrity of the employee's services.

5. Add a new § 336.735-13a to read:

§ 336.735-13a Disqualification from decision-making.

(a) An employee with an interest (other than an insured deposit) in a bank or other financial institution which is not prohibited by law, or an interest in a bank, financial institution, or other entity which is or may be affected by a particular Corporation decision, will report the interest and be disqualified from participating in any such decision.

(b) Reports of interests required by this section shall be made as follows:

(1) Any employee who files an annual supplementary statement as described in § 336.735-34, and obtains a previously unreported interest subsequent to that filing, will report the interest within 30 days of the acquisition of the interest.

(2) Any employee not required to file an annual supplementary statement will report an interest within 30 days of his or her entrance on duty; or within 30 days of the acquisition of the interest, if acquired subsequent to his or her employment.

(3) Reports will be made on an official Corporation form designated for this purpose.

6. In § 336.735-17, revise paragraph (b) to read:

§ 336.735-17 Gambling, betting and lotteries.

(b) Related to internal solicitations approved by the Corporation for organizational support or welfare funds for employees, or similar Corporation-approved activities.

§ 336.735-18 [Amended]

7. In § 336.735-18, change the last word of the section title from "Government" to "Corporation."

§ 336.735-19 [Amended]

8. In § 336.735-19, add the phrase "which prescribes general standards of conduct," to the end of paragraph (a); delete and reserve paragraph (e); and add a new paragraph (f) to read "The prohibition against accepting excessive honorariums (2 U.S.C. 441i)."

9. Retitle and revise § 336.735-31 as follows:

§ 336.735-31 Criteria to determine who must submit statements.

Except as provided in § 336.735-32, statements of employment and financial interest shall be filed by the following employees—

(a) Those paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Positions which meet the following criteria:

(1) Positions the incumbent of which is responsible for making a Corporation decision or taking a Corporation action in regard to—

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing a private or other non-Federal enterprise; or

(iv) Other activities where the decision or action has an economic impact on the interests of banks or any other non-Federal enterprise.

(2) Positions which the Corporation determines require the incumbent to report employment and financial interest in order to carry out the purposes of law, Executive Order, this part, or any other Corporation regulations.

(3) Approval of the Civil Service Commission will be obtained before requiring the incumbent of a position below the GS-13 level to file a statement under this section.

10. Retitle and revise § 336.735-31a as follows:

§ 336.735-31a Corporation employees required to file statements.

(a) The Corporation has determined that all positions enumerated in paragraphs (b) and (c) of this section meet the criteria described in § 336.735-31. Holders of these positions are required to file statements of employment and financial interest, unless § 336.735-32 is applicable to them.

(b) The Ethics Counselor shall file a statement with the Chairman of the Board of Directors.

(c) The following employees shall file statements with the Ethics Counselor:

(1) Assistants to the Board of Directors;

(2) Deputies or Assistants to the individual Directors;

(3) Division and Office Heads who report directly to the Board of Directors or its individual members;

(4) The holder or holders of the position immediately subordinate to a Division or Office Head covered subparagraph (3) (whether designated as Deputy, Assistant or any other title);

(5) Regional Directors;

(6) Assistant Regional Directors;

(7) Branch or comparable office heads;

(8) All commissioned bank examiners, as well as other employees of the Division of Bank Supervision who do not regularly examine banks but who are paid at or above the GS-13 level;

(9) Employees of the Division of Liquidation paid at or above the GS-13 level;

(10) Assessment Auditors paid at or above the GS-11 level;

(11) Those employees of the Operations Branch, the Office of the Controller, paid at the GS-9 level or above who evaluate, recommend, purchase, or contract for equipment, materials and services required by the Corporation;

(12) Employees assigned to the Software and Hardware Support and Evaluation Section paid at or above the GS-14 level;

(13) Individuals employed by the Corporation as attorneys, whether assigned to the Washington Office of the Legal Division, another Washington Division or Office, a Regional Office or a liquidation office. This paragraph does not include outside attorneys retained by the FDIC, and who are otherwise engaged in the private practice of law.

(d) An employee may object to the Ethics Counselor that his or her position has been improperly included as one requiring the submission of a statement of employment and financial interest. When an objection cannot be resolved or explained satisfactorily to the employee, he or she shall be granted a review of the matter

through the Corporation's grievance procedure.

11. Revise § 336.735-32 to read:

§ 336.735-32 Employees not required to submit statements.

Employees or Special Employees who receive salaries at rates equal to or greater than the minimum rate of basic pay fixed for GS-16 shall file disclosure statements under Title II of Ethics in Government Act of 1978 rather than statements of employment and financial interest under this Part 336.

12. Revise § 336.735-33 to read:

§ 336.735-33 Time and Place for submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interest under § 336.735-31 shall be advised in writing of this obligation by the Office of Personnel Management at least 15 days before the date the report is required.

(b) Employees shall file statements not later than 30 after the effective date of this revision to Part 336 if employed on or before that effective date, or 30 days after entrance on duty or reassignment or promotion to a covered position.

(c) Notwithstanding any other provision in this section, filing may be required prior to employment or promotion for executive level persons and certain other senior positions.

13. Revise § 336.735-34 to read as follows:

§ 336.735-34 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's statement of employment and financial interest shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a report to that effect is required.

(b) Employees required to file these annual supplementary statements must be advised in writing of this obligation, with a copy of the relevant reporting form. Except as otherwise provided by the Board of Directors, a letter to this effect shall be distributed by the Office of Personnel Management no later than June 15th with the instruction that the statement must be returned after July 1st, but no later than July 31st.

(c) The filing of the annual supplementary statement required of certain employees by this section does not authorize any person to engage in any activity or maintain any interest prohibited by law, regulation, or order.

14. Revise and Retitle § 336.735-35 to read:

§ 336.735-35 Financial interests of employee's spouse and dependent child.

A financial interest of an employee's spouse or of an employee's dependent child is considered to be an interest of the employee, except that such interest shall not be so regarded if—

(a) The interest is solely the financial interest and responsibility of the spouse or of the dependent child, and the employee has no knowledge of it; and

(b) The interest is not in any way, past or present, derived from the income, assets, or activities of the employee; and

(c) The employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

§ 336.735-38 [Amended]

15. In the second sentence of § 336.735-38, substitute "Ethics Counselor" for "assistant to the Chairman of the Board of Directors". In the last sentence of § 336.735-38, insert "Chairman of the" prior to "Civil Service Commission".

§ 336.735-40 [Amended]

16. In § 336.735-40 amend the first sentence of paragraph (a) to read:

(a) \* \* \* Except as provided in paragraph (b) of this section, each Special Corporation Employee who is not required to file disclosure statements under § 336.735-32, shall submit a statement of employment and financial interest which reports: Amend paragraph (b) by adding the following sentence after the word "patients": "Special Corporation Employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns; and individuals paid out of 'Imprest Funds' to assist in bank liquidations. \* \* \*

17. Revise § 336.735-41, to read as follows:

§ 336.735-41 Reviewing statements and reporting conflicts of interest.

(a) Annual supplementary statements submitted under § 336.735-34 will be reviewed by the Ethics Counselor by August 31. The Ethics Counselor may be assisted in his or her review by no more than two of the Deputy Ethics Counselors referred to in § 336.735-3(c).

(b) When a statement submitted under § 336.735-31 and § 336.735-34, or information from other sources indicates a possible conflict between the interests of an employee or Special Corporation Employee and the performance of his or her service for the Corporation:

(1) The Ethics Counselor shall investigate the matter and allow the employee or Special Corporation Employee



ee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of conflict exists.

(2) The Ethics Counselor shall attempt to resolve the matter expeditiously.

(3) If an employee is dissatisfied with the Ethics Counselor's proposed resolution, and the matter cannot be resolved by the September 30 following the filing of a required statement, the information concerning the conflict or appearance of conflict shall be reported to the Chairman of the Board of Directors for resolution.)

#### Appendix A [Deleted]

18. Delete Appendix A and its contents.

(12 U.S.C. 1819; 5 CFR 735.104; E.O. 11222) [FR Doc. 78-35931 Filed 12-26-78; 8:45 am]

#### [6750-01-M]

##### Title 16—Commercial Practices

##### CHAPTER I—FEDERAL TRADE COMMISSION

##### RESPONSIBILITIES UNDER TITLE II OF THE HART-SCOTT-RODINO ANTI-TRUST IMPROVEMENTS ACT OF 1976

##### Delegation to Assistant Director for Evaluation

AGENCY: Federal Trade Commission.

ACTION: Delegation to Assistant Director for Evaluation those responsibilities under Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 previously delegated to the Associate Director for Premerger Notification.

SUMMARY: In order to facilitate the efficient operation of the premerger notification program, implementing Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Commission, prior to the September 5, 1978 effective date, delegated several of its responsibilities under the Act to the Director, Deputy Director and Associate Director for Premerger Notification of the Bureau of Competition. These delegated responsibilities consist of the authority to make and issue requests for additional information. In addition, under the premerger notification rules, the above-designated staff members were authorized by the Commission to request the submission of documents, an index of which must be filed in connection with certain acquisitions exempted by the Act and rules. As of November 1, 1978, the responsibilities of the Associate Director for Premerger Notification have been

transferred to the Assistant Director for Evaluation and the position of Associate Director for Premerger Notification has been eliminated. Thus, all responsibilities previously delegated by the Commission to the Associate Director for Premerger Notification are delegated to the Assistant Director for Evaluation.

EFFECTIVE DATE: November 1, 1978.

##### FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

##### SUPPLEMENTARY INFORMATION:

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and Assistant Attorney General in charge of the Antitrust Division of the Department of Justice advance notice and wait designated periods before consummation of those plans. Section 7A(e)(1) and (e)(2) of the Act and §803.20 of the rules authorize the Commission or the Assistant Attorney General prior to the expiration of the appropriate waiting period to make and issue requests for additional information to persons required to file notification. Sections 802.6 and 802.8 of the premerger notification rules authorize the Commission or the Assistant Attorney General or delegated officials of either to request the submission of documents, an index of which must be filed in connection with acquisitions exempted by section 7A(c)(6) and (c)(8) of the Act. These delegations of authority to the Director, Deputy Directors and Associate Director for Premerger Notification of the Bureau of Competition are included in the Statement of Basis and Purpose which accompanied the final rules and Form in the FEDERAL REGISTER of July 31, 1978, 43 FR 33450.

By direction of the Commission.

CAROL M. THOMAS,  
Secretary.

[FR Doc. 78-35976 Filed 12-22-78; 8:45 am]

#### [6750-01-M]

##### Title 16—Commercial Practices

##### CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 8987]

##### PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

##### National Commission on Egg Nutrition et al.

AGENCY: Federal Trade Commission.

ACTION: Modification of order to cease and desist.

SUMMARY: This modified order to cease and desist replaces the order issued on July 20, 1976. In accordance with the November 29, 1977 decision and judgment of the Court of Appeals for the 7th Circuit, as amended on December 6, 1977, the instant order mandates disclosure of controversy among medical experts as to the relationship of dietary cholesterol, including that in eggs, to heart and circulatory disease only when NCEN chooses to make a representation regarding the state of the available evidence or information concerning the controversy.

DATES: Decision issued July 20, 1976. Modifying order issued November 17, 1978.

##### FOR FURTHER INFORMATION CONTACT:

FTC/GE, Jerold D. Cummins, Washington, D.C., 20580. (202) 523-1928.

SUPPLEMENTARY INFORMATION: In the Matter of National Commission on Egg Nutrition, et al. The prohibited trade practices and/or corrective actions, as modified under 16 CFR Part 13, appearing at 41 FR 34939, remain unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45, 52))

The order modifying order to cease and desist, is as follows:

##### MODIFIED ORDER TO CEASE AND DESIST

Respondents, having filed in the United States Court of Appeals for the Seventh Circuit petition for review of the Commission's cease and desist order issued herein on July 20, 1976; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the Supreme Court of the United States having denied on October 2, 1978, a petition for writ of certiorari filed by the National Commission on Egg Nutrition:

\*Copies of the modifying order filed with the original document.

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

It is ordered, That respondents National Commission on Egg Nutrition and Richard Weiner, Inc., corporations, their successors and assigns, either jointly or individually, and respondents' officers, agents, representatives, and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of eggs for human consumption do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that there is no scientific evidence that eating eggs increases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

2. Represents that there is scientific evidence that dietary cholesterol, including that in eggs, decreases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

3. Represents that there is scientific evidence that avoiding dietary cholesterol, including that in eggs, increases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

4. Represents that eating eggs does not increase the blood cholesterol level in a normal person;

5. Represents that the blood cholesterol level is prevented from being raised or lowered by dietary cholesterol intake;

6. Represents that the human body increases its manufacture of cholesterol in an amount equal to a decrease in dietary cholesterol intake;

7. Represents that the average human body eliminates the same amount of cholesterol as that eaten;

8. Represents that dietary cholesterol, including that in eggs is needed by the body for building sex hormones, for transmitting nerve impulses and for maintaining life in cells; or

9. Utilizes the name "National Commission on Egg Nutrition" unless it is clearly and conspicuously disclosed in immediate conjunction with the name that the National Commission on Egg Nutrition is composed of egg producers and other individuals and organizations of, or relating to, the egg industry.

B. Disseminating, or causing the dissemination, of any advertisement by

means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that eating eggs does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition or

2. Makes any representation concerning the relationship of dietary cholesterol, including that in eggs, to heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition

unless it is clearly and conspicuously disclosed in immediate conjunction therewith that there is a controversy among medical experts concerning the relationship of dietary cholesterol, including that in eggs, to heart disease, and that respondents are presenting their side of that controversy.

C. Disseminating, or causing the dissemination of, any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that there exists, or describes, scientific evidence which supports the theory that consumption of dietary cholesterol, including that in eggs, does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition or

2. Makes any representation concerning the state of the available evidence or information concerning the relationship of dietary cholesterol, including that in eggs, to heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition

unless it is clearly and conspicuously disclosed in immediate conjunction therewith that many medical experts believe that existing evidence indicates that increased consumption of dietary cholesterol, including that in eggs, may increase the risk of heart disease.

D. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents as insignificant the available scientific evidence that the consumption of dietary cholesterol, including that in eggs, may increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition, or represents that there is overwhelming scientific evidence or otherwise misrepresents the amount of scientific evidence that eating eggs does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition.

sclerosis, arteriosclerosis, or any attendant condition.

2. Misrepresents in any manner the physiological effects of consuming dietary cholesterol or eggs.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions, and to all current and future members of respondent National Commission on Egg Nutrition.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

By the Commission.

CAROL M. THOMAS,  
Secretary.

[FR Doc. 78-35887 Filed 12-26-78; 8:45 am]

#### [6750-01-M]

[Docket Nos. 9058; 8901; C-2806; C-2807; C-2808; C-2809; C-2810; C-2811]

##### PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Capax, Inc.; Trans-American Collections, Inc.; United Computer Collections, Inc.; Trans National Credit Corporation; Continental Collection Bureau of America, Inc.; North American Collections, Inc.; Power's Service, Inc.; Continental Collection Service

AGENCY: Federal Trade Commission.

ACTION: Interlocutory and Modifying Orders.

SUMMARY: This order denies a petition of Capax, Inc. requesting reconsideration of its order issued on May 25, 1978 or reopening of proceeding in Docket No. 9058. Additionally, the order reopens and modifies, by deleting the disclosure requirement, the final order in Docket No. 8901, issued on September 26, 1973, and those orders in Docket Nos. C-2806 through C-2811 inclusive, issued on March 11, 1976.



**DATES:** Interlocutory and Modifying Orders issued November 28, 1978.  
**FOR FURTHER INFORMATION CONTACT:**

FTC/PD, Alan D. Reffkin, Washington, D.C. 20580. (202) 724-1187.

**SUPPLEMENTARY INFORMATION:** In the Matter of Capax, Inc., a corporation, formerly Continental Credit Corporation, Inc., a corporation, and Joseph V. Defelice and Arnold Goodman, individually and as officers of said corporation; and Norman Bricker, individually and as a former officer of said corporation; and Trans-American Collections, Inc., a corporation, and Wayne E. Martin, individually and as officer of Trans-American Collections, Inc.; and Eleanor G. Martin, individually and as officer of Trans-American Collections, Inc.; and United Compured Collections, Inc., a corporation, and Wes Symmonds and Janet Symmonds, individually and as officers of said corporation; and Trans National Credit Corporation, a corporation, and Robert F. Mitchell and Pat L. Bangor, individually and as officers of said corporation; and Continental Collection Bureau of America, Inc., a corporation, and William M. Weinberg, Peter J. Vann, and Laval Clements, individually and as officers of said corporation; and North American Collections, Inc., a corporation, and Robert J. Kerr, individually and as an officer of said corporation; and Power's Service, Inc., a corporation, and Community Systems Corporation, a corporation, and Rosalind M. Mikesell, H. O. Seymour and G. C. Seymour, individually and as officers of said corporations, and J. P. Mikesell, individually and as an officer of Power's Service, Inc.; and Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as co-partners of said Partnership. The prohibited trade practices and/or corrective actions, except for the deletion of Subpart—Corrective Actions and/or Requirements and its associated sections, as codified under 16 CFR Part 13, appearing at 38 FR 28933, 40 FR 19206, 40 FR 19205, 40 FR 19204, and 40 FR 19201, respectively, remains unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

The Interlocutory and Modifying Order to cease and desist, is as follows:

**ORDER DENYING PETITION FOR RECONSIDERATION OF FINAL ORDER OR REOPENING OF PROCEEDING IN DOCKET NO. 9058 AND REOPENING AND MODIFYING FINAL ORDERS IN DOCKET NOS. 8901 AND C-2806-C-2811**

On May 25, 1978, the Commission issued its final order and opinion in

\*Copies of the Interlocutory and Modifying orders filed with the original document.

*Capax, Inc.* The Commission held that respondents had engaged in certain misrepresentations in the course of their service to assist creditors in the collection of alleged delinquent debts, and prohibited these misrepresentations in its final order. The Commission rejected complaint counsel's request that respondents be required to provide an affirmative disclosure in each communication sent to alleged debtors, stating:

"We do not consider the affirmative disclosure sought here by complaint counsel to be necessary, under the circumstances of this case, in light of the order's ample prohibitions on misrepresentations. Moreover, we believe that the proposed disclaimer could lull recipients into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal action or harm to their credit standing. Because creditors might pursue an alleged delinquent debt by bringing suit or could report the matter to a consumer reporting agency, debtors who decided not to make payment on the basis of the disclaimer could suffer harm. Therefore, our order will not include the proposed affirmative disclosure."

Previously, the Commission had ordered disclosures similar to that sought by complaint counsel in *Trans-American Collections, Inc.*, Docket No. 8901, 83 F.T.C. 525 (1973); *United Compured Collections, Inc.*, Docket No. C-2806, 87 F.T.C. 542 (1976); *Trans National Credit Corp.*, Docket No. C-2807, 87 F.T.C. 549 (1976); *Continental Collection Bureau of America, Inc.*, Docket No. C-2808, 87 F.T.C. 557 (1976); *North American Collections, Inc.*, Docket No. C-2809, 87 F.T.C. 566 (1976); *Power's Service, Inc.*, Docket No. C-2810, 87 F.T.C. 574 (1976); and *Continental Collection Service*, Docket No. C-2811, 87 F.T.C. 582 (1976). On the date of issuance of the final order and opinion in *Capax*, the Commission issued orders to show cause why the above-cited orders should not be modified to delete the mandated affirmative disclosures, pursuant to Commission Rule 3.72(b). In its orders to show cause, the Commission stated that the reasoning articulated in *Capax* for rejecting complaint counsel's request for an affirmative disclosure may be equally applicable to the above-cited orders and that their requirement of an affirmative disclosure should be reconsidered.<sup>1</sup>

Complaint counsel have petitioned for reconsideration of the Commission's order in *Capax* pursuant to Rule 3.55, or in the alternative, for reopening of the proceeding in order to modify the Commission's decision not to require *Capax* to use an affirmative disclosure in its communications, pursuant to Rule 3.72. In support of their petition, complaint counsel argue that (1) since the Fair Debt Collection Practices Act became effective on March 20, 1978, "many complaints have been received pointing out the inherently deceptive nature of dunning letters sent by flat rate letter writing services," (2) an affirmative disclosure requirement is necessary to avoid the deception most certain to occur in the use of dunning notices, and (3) insertion of a modified version of the affirmative disclosures proposed by complaint counsel will prevent any misleading impression.

In a separate pleading, the Bureau of Consumer Protection has filed an opposition to the modification of the orders in Docket Nos. 8901 and C-2806-C-2811 pending determination of complaint counsel's petition in *Capax*.

Counsel for *Capax* have filed an answer opposing complaint counsel's petition for reconsideration or reopening. That petition has also been opposed by counsel for *Trans World Accounts*, another company which provides debt collection services and which is an appellant from a final Commission order.

*Trans-American Collections* and the other respondents in Docket No. 8901 have filed a response to the order to show cause, expressing their acceptance of the proposed modification to the order in that matter. *Power's Service* and *Community Systems*, respondents in Docket No. C-2810, have filed a motion requesting the Commission to modify the consent order in accordance with the order to show cause. None of the other respondents who received the show cause orders has filed a response.

Although the Commission does not have authority to modify the order in *Capax* at this time,<sup>2</sup> either in response to a petition for reconsideration or for reopening, we will address the substance of complaint counsel's arguments, since this issue is central to the orders to show cause which are opposed by the Bureau of Consumer Protection. The Commission finds that the pleadings do not raise material issues of fact, and therefore will decide the matters on the orders to show cause and answer thereto, in accordance with Rule 3.72(b)(3).

Complaint counsel argue that since the effective date of the Fair Debt Collection Practices Act, many complaints have been received indicating that dunning letters sent by flat rate

<sup>1</sup>15 U.S.C. 45(b).

letter debt collection services are inherently deceptive. According to complaint counsel, the majority of consumers are unaware that in most cases such services have "virtually no authority to proceed with what is commonly understood to be normal collection efforts," and an affirmative disclosure such as that proposed is necessary to avoid deception. The Commission has never found that third party collection letters are inherently deceptive, and has no basis for making any such finding now. We see no reason to depart from our determination that the prohibitions on misrepresentations contained in the *Capax* order render an affirmative disclosure unnecessary. Under the order, *Capax* is prohibited from misrepresenting (1) the urgency of any communication, (2) its authority to engage in certain kinds of debt collection activity, (3) the likelihood of legal action, (4) the effect of nonpayment upon a debtor's credit record, and (5) the imminency of any action that may or will be taken. A prohibition upon these misrepresentations will eliminate the deception found by the Commission in *Capax*. Similar prohibitions are contained in the consent orders subject to the orders to show cause.

The Fair Debt Collection Practices Act, which became effective on March 20 of this year, is relied upon by complaint counsel as a basis for reconsideration. That Act was fully taken into account in the Commissioner's determination, and presents no new question. The operation of that Act provides even less reason to mandate any affirmative disclosure than before, due to the requirement imposed upon debt collectors to provide a prescribed written notice within five days after the initial communication with a consumer and the requirement to cease collection of a debt after notification by the consumer. Section 809, 15 U.S.C. 1692g.

The Commission expressed concern in *Capax* that the affirmative disclosure proposed by complaint counsel may lull consumers into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal or other action by the creditor. To remedy this possible misimpression, complaint counsel now propose that the following sentence be added to the disclaimer: "The creditor is permitted to take whatever action is available under State law." While this modification may be helpful, we nevertheless believe that no additional disclosure is necessary.

Accordingly, it is ordered, That:

(1) The petition requesting reconsideration of reopening of the proceeding in *Capax*, Docket No. 9058, be denied;

(2) The final order in Docket No. 8901 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. *Trans-American Collections, Inc.*, cannot accept monies nor will it take any action, legal or otherwise, regarding this claim.

(3) The final order in Docket No. C-2806 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. *United Compured Collections, Inc.*, does not accept payment. *United Compured Collections, Inc.*, does not ordinarily file suit.

(4) The final order in Docket No. C-2807 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. *Trans National Credit Corporation* does not accept payment. *Trans National Credit Corporation* does not ordinarily file suit.

(5) The final order in Docket No. C-2808 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. *Continental Collection Bureau of America, Inc.*, does not accept payment. *Continental Collection Bureau of America, Inc.*, does not ordinarily file suit.

(6) The final order in Docket No. C-2809 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. *North American Collections, Inc.*, does not accept payment. *North American Collection, Inc.*, does not ordinarily file suit.

(7) The final order in Docket No. C-2810 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. *Power's Service, Inc.*, cannot accept payment nor will it take legal action regarding this claim.

(8) The final order in Docket No. C-2811 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. *Continental Collection Service* does not accept payment. *Continental Collection Service* does not ordinarily file suit.

By the Commission.

CAROL M. THOMAS,  
 Secretary.

[FR Doc. 78-35978 Filed 12-26-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

## CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 79-5]

### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

#### Delay in Effective Date for Mandatory Use of Cargo Declaration Forms in Connection With Vessel Arrivals or Departures

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Delay in effective date for use of cargo declaration forms.

**SUMMARY:** Treasury Decision 77-255 provided for the mandatory use as of September 1, 1978, of newly-developed cargo declaration forms in connection with vessel arrivals or departures. Because a number of ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would work a hardship on them, Customs agreed to delay the mandatory effective date until January 1, 1979. This document extends the time for mandatory use of these forms until April 1, 1979, to allow time for consideration of a possible amendment to the Customs Regulations to simplify procedures relating to the reporting of bill of lading numbers of containerized cargo on one of the new forms and to give carriers additional time to comply with the new requirements.

**EFFECTIVE DATE:** The use of the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, shall be mandatory as of April 1, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229, 202-566-5706.



## SUPPLEMENTARY INFORMATION:

## BACKGROUND

Treasury Decision 77-255, published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56317), Amended Part 4, Customs Regulations (19 CFR Part 4), to provide for newly-developed cargo declaration forms in connection with vessel arrivals or departures and to establish procedures for their use.

The forms, the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, follow a format developed by the Intergovernmental Maritime Consultative Organization, as modified by the International Chamber of Shipping. Their development implements an agreement made by the United States when it ratified the Convention of Facilitation of International Maritime Traffic to use standardized international forms in connection with vessel arrivals or departures to the extent that the forms satisfy United States legal requirements. The purpose of the new forms is to simplify paperwork without reducing effective Customs control over vessel movements.

T.D. 77-255 provided for the use of the forms any time after October 25, 1977, and for their mandatory use as of September 1, 1978. However, a number of U.S. ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would impose a hardship and requested that they be given additional time to comply with the new requirements. After consideration of these requests, by Treasury Decision 78-291, published in the FEDERAL REGISTER on August 18, 1978 (43 FR 36621), Customs delayed the effective date for mandatory use of the forms until January 1, 1979.

## REPORTING OF BILL OF LADING NUMBERS FOR CONTAINERIZED CARGO

Section 4.7a(c)(2), Customs Regulations (19 CFR 4.7a(c)(2)), as amended by T.D. 77-255, provides that (1) all bills of lading for inward foreign cargo shipped in containers shall be listed in numerical sequence on Customs Form 1302, (2) the number of the container which contains the cargo covered by that bill of lading and the container seal number shall be listed opposite the bill of lading number, and (3) the number of any other bill of lading for cargo in that container also shall be listed immediately under the container and seal numbers. Therefore, for containers with merchandise covered by more than one bill of lading number, the same bill of lading numbers must be listed more than once on Customs Form 1302.

Because multiple listings of the same bill of lading number impose a

burden on carriers without corresponding benefit to Customs, a simplified alternative is being developed to eliminate the need to report bill of lading numbers more than once on Customs Form 1302. The alternative procedure, if adopted, will be the subject of an amendment to § 4.7a(c)(2), Customs Regulations, published in the FEDERAL REGISTER and the Customs Bulletin in the near future.

## REQUEST FOR FURTHER DELAY IN EFFECTIVE DATE

Customs has been requested, on behalf of an association of United States ocean carriers, to delay further, until April 1, 1979, the mandatory date for use of the new forms. The delay is requested to permit consideration of the amendment to section 4.7a(c)(2), Customs Regulations, described above, and to provide carriers additional time to comply with the new requirements.

## DELAY IN MANDATORY EFFECTIVE DATE

After considering this request, Customs is delaying the date for mandatory use of Customs Form 1302 and Customs Form 1302-A until April 1, 1979. No further extensions of the time for mandatory use of the forms will be granted.

## DRAFTING INFORMATION

The principal author of this document was Mark Jenkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 21, 1978.

R. E. CHASEN,  
Commissioner of Customs.  
(FR Doc. 78-35955 Filed 12-26-78; 8:45 am)

[4810-34-M]

Title 31—Money and Finance:  
TreasurySUBTITLE A—OFFICE OF THE  
SECRETARY OF THE TREASURY

## PART 1—DISCLOSURE OF RECORDS

Subpart A—Under 5 U.S.C. 552, as  
AmendedAPPENDIX F—BUREAU OF ENGRAVING  
AND PRINTING

AGENCY: Bureau of Engraving and Printing, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of Engraving and Printing is amending Appendix F to 31 CFR Part 1, Subpart A. This appendix is being changed to reflect a reorganization which changes the appellate official from the Assistant Secre-

tary (Enforcement, Operations, and Tariff Affairs) to the Under Secretary of the Treasury.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

H. T. Krisak, Superintendent, Management Services Division, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, D.C., 20228, (202) 447-0261.

SUPPLEMENTARY INFORMATION: Paragraph 4 is amended to change the official responsible for appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing. Public comment is deemed impracticable and unnecessary under 5 U.S.C. 553(b)(3)(B). This regulation does not meet the criteria for a significant regulation set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (42 FR 22319).

(5 U.S.C. 552; 31 CFR 1.1)

As amended, paragraph 4 reads as follows:

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing will be made by the Under Secretary of the Treasury. Appeals made by mail should be addressed to:

Under Secretary of the Treasury, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3312, Washington, D.C. 20220.

Requests may be delivered personally to the Under Secretary of the Treasury in Room 3312, Main Treasury Building located at 1500 Pennsylvania Avenue, NW., Washington, D.C.

SEYMOUR BERRY,  
Director, Bureau of  
Engraving and Printing.

(FR Doc. 78-35977 Filed 12-26-78; 8:45 am)

[7710-12-M]

## Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL  
SERVICESUBCHAPTER D—ORGANIZATION AND  
ADMINISTRATIONPART 224—GROUPS AND  
DEPARTMENTS

## SUBCHAPTER N—PROCEDURES

PART 955—RULES OF PRACTICE  
BEFORE THE BOARD OF CON-  
TRACT APPEALS

## Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document reflects organizational changes within the Administration Group due to the establishment of the position of Associate Judicial Officer. It also reflects the amendment by the Judicial Officer pursuant to his authority under 39 CFR 224.1(c)(5)(ii)(D) of the rules of practice before the Board of Contract Appeals contained in 39 CFR Part 955. The amendment provides that the Associate Judicial Officer is Vice Chairman of the U.S. Postal Service Board of Contract Appeals.

EFFECTIVE DATE: December 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Neva Watson (202) 245-4642. Accordingly, 39 CFR is amended as follows:

PART 224—GROUPS AND  
DEPARTMENTS

## § 224.1 [Amended]

1. In § 224.1(c)(5)(i) add the following new paragraph at the end thereof:

(c) \* \* \*

(i) \* \* \* As directed by the Judicial Officer, the Associate Judicial Officer assists in the administration of the office and normally is the Acting Judicial Officer when the Judicial Officer is absent or unable to serve. The Associate Judicial Officer is the ex officio Vice Chairman of the Board of Contract Appeals.

2. In § 224.1(c)(5)(v)(B) revise the first sentence to read as follows:

(c) \* \* \*  
(5) \* \* \*  
(v) \* \* \*

(B) The Board of Contract Appeals of the Postal Service is composed of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman and the Administrative Law Judges of the Postal Service. \* \* \*

PART 955—RULES OF PRACTICE  
BEFORE THE BOARD OF CONTRACT  
APPEALS

In § 955.1(b)(2) revise the first sentence to read as follows:

(b) \* \* \*

(2) \* \* \* The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman and the Administrative Law Judges of the Postal Service. \* \* \*

(39 U.S.C. 204, 401(2))

W. ALLEN SANDERS,  
Assistant General Counsel.

(FR Doc. 78-35893 Filed 12-26-78; 8:45 am)

[6712-01-M]

## Title 47—Telecommunication

CHAPTER I—FEDERAL  
COMMUNICATIONS COMMISSION

[SS Docket No. 78-137; FCC 78-855]

NEW PUBLIC COAST STATIONS,  
AERONAUTICAL ADVISORY STA-  
TIONS AND RADIONAVIGATION  
LAND STATIONS IN THE AVIATION  
SERVICESRequiring Notification Upon  
Commencement of Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rulemaking amends Parts 1, 81, and 87 of the Commission's rules to require notification, upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services except radionavigation land test stations (MTF or OTF). This has been a routine condition of grant for public coast stations. This rulemaking incorporates this condition of grant into the Commission's rules and extends it to aeronautical advisory stations and radionavigation land stations in the Aviation Services except radionavigation land test stations (MTF or OTF).

EFFECTIVE DATE: January 29, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John C. K. Hays, Safety and Special Radio Services Bureau (202-632-7197).

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 1, 81 and 87 of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services. Report and order (Proceeding Terminated).

Adopted: December 12, 1978.

Released: December 20, 1978.

By the Commission:

1. The Commission issued a Notice of Proposed Rule Making to amend its rules to require the licensees of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services to notify the Commission of the commencement of station operations. Each of these types of stations provides important services to the public, and their frequencies, locations and hours of service are listed in various Government and non-Government publications. Under Commission rules only one station is permitted to operate in the area defined for that type of station, and operations must commence within eight months of the initial grant of the station license. If a station does not commence operations within this time period, the station license becomes invalid and must be returned to the Commission for cancellation. A new applicant then may file for a station license to serve that area.

2. To properly administer these rules and to provide accurate information concerning station operations, it is necessary that the Commission be promptly informed of the commencement of station operations. These new rules require the licensees of these types of stations to notify the Commission in writing when the station is placed in operation. If the licensee fails to notify the Commission within 8 months of commencement of station operation, it is conclusively presumed that the station is not in operation and the license becomes invalid unless the licensee shows "good cause" why notification was not made. A statement of "good cause" is not sufficient if it merely rests on the actions of the licensee or those associated with him. To come within "good cause", the failure to notify must rest with some third party not within the control of the licensee.

3. The notice of Proposed Rule Making was released on May 5, 1978, and was published in the FEDERAL REGISTER on May 8, 1978 (43 F.R. 19690). Timely comments were filed by the Aircraft Owners and Pilots Association (AOPA) and the Aerospace and Flight Test Radio Coordinating Council (AFTRCC).

4. AOPA does not object to these amendments to the rules and recommends that the information on licenses issued and notification of com-



commencement of service for aeronautical advisory stations and radionavigation land stations be coordinated with the Federal Aviation Administration for dissemination to users in the various FAA publications. We believe this recommendation is in the public interest and will adopt it. Presently, we provide the FAA with the information on the station license when the license is issued. In the future, we will send this information to the FAA when the station becomes operational.

5. **AFTTRCC** concurs with the intent of these amendments but requests that we clarify whether licensees of radionavigation land test stations (MTF or OTF) will be required to provide notification of commencement of service. (Radionavigation land test stations are radionavigation land stations used for the testing and calibration of aircraft navigational aids, receiving equipment, and interrogators at predetermined surface locations. A radionavigation land test station (MTF) is a Maintenance Test Facility used for maintenance testing by aircraft radio service personnel. A radionavigation land test station (OTF) is an Operational Test Facility which permits the pilot to check a radionavigation system aboard an aircraft prior to takeoff. The licensees of radionavigation land test stations (MTF or OTF) are generally aircraft and avionics manufacturing and service organizations.)

6. It was not our intent to include radionavigation land test stations (MTF or OTF) within the scope of these amendments. Under our rules more than one of these stations is permitted at a locality and, therefore, licenses may be issued without regard to prior grants provided there is no frequency interference. Moreover, information concerning the operation of these stations is not listed in the publications periodically issued by the FAA to inform pilots. In view of this, we will explicitly exclude radionavigation land test stations (MTF or OTF) from these new rules.

7. For further information on this proceeding, contact John Hays at 202-632-7197.

8. Accordingly, *it is ordered*, That pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 1, 81 and 87 of the Commission's rules are amended effective January 29, 1979, as set forth below.

9. *It is further ordered*, That this proceeding is terminated.

(Sec. 4, 303, 40 *et al.*, as amended, 1086, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
Secretary.

Parts 1, 81 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

#### PART 1—PRACTICE AND PROCEDURES

Section 1.932 is revised to read as follows:

§ 1.932 Time in which station must be placed in operation.

(a) For operational-fixed stations authorized to operate on frequencies above 962 MHz, the authorized station must be placed in operation within twelve months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation. For all other stations, the authorized station must be placed in operation within eight months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station, a new aeronautical advisory station or a new radionavigation land station in the Aviation Services except a radionavigation land test station (MTF or OTF) shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

#### PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

Section 81.61 is revised to read as follows:

§ 81.61 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation

and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

#### PART 87—AVIATION SERVICES

A new § 87.58 is added to read as follows:

§ 87.58 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new aeronautical advisory station or a new radionavigation land station except a radionavigation land test station (MTF or OTF) shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

(FR Doc. 78-35968 Filed 12-26-78; 8:45 am)

#### [7035-01-M]

##### Title 49—Transportation

#### CHAPTER X—INTERSTATE COMMERCE COMMISSION

##### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

(Second Rev. S.O. No. 1305)

#### PART 1033—CAR SERVICE

##### Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order, (Second Revised Service Order No. 1305).

SUMMARY: There is a severe shortage of boxcars on The Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Union Pacific Railroad Company (UP). These lines own a group of mechanical refrigerator cars which are now surplus. Because of their limited cubical capacity many shipments that could be transported in these cars cannot be loaded with the minimum quantities specified by the applicable tariffs. Second Revised Service Order No. 1305 authorizes the ATSF and the UP to substitute two of these refrigerator cars for each boxcar

ordered. The minimum weight to be applied to each set of two such cars is the minimum weight applicable to the boxcar ordered. The consent of the shippers is required.

DATED: Effective 12:01 a.m., December 22, 1978. Expires 11:59 p.m., May 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below: Decided: December 20, 1978.

There is an acute shortage of plain boxcars for loading shipments of various commodities on the lines of The Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Union Pacific Railroad Company (UP). The ATSF and UP have a surplus of mechanical refrigerator cars which are suitable for transporting these products if the use of two such cars for each boxcar ordered is permitted.

The economic loss suffered by shippers dependent on the ATSF and UP for their car supplies can be alleviated by the substitution of sufficient smaller cars for the larger cars ordered to transport the shipments offered.

In the opinion of the Commission, present regulations and practices with respect to the use and supply of boxcars are ineffective to overcome these shortages of boxcars and an emergency exists requiring immediate action. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered,*

§ 1033.1305 Second Revised Service Order No. 1305.

(a) *Distribution of freight cars.* Subject to the concurrence of the shipper The Atchison, Topeka, and Santa Fe Railway Company (ATSF) and the Union Pacific Railroad Company (UP) may substitute two mechanical refrigerator cars identified below for each boxcar ordered:

SFRC-2300-55199, inclusive; UPRX—all cars.

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions which require that cars be furnished by the shipper.

(c) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished

and loaded as authorized by paragraph (a) of this section shall be the rates and minimum weights applicable to the larger cars ordered.

(d) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by paragraph (a) of this section shall place the following endorsement on the bill of lading and on the waybills authorizing movement of the car:

Boxcar Ordered, UPRX or SFRC (—) and UPRX or SFRC (—) furnished authority ICC Second Revised Service Order No. 1305.

(e) *Concurrence of Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the shipper.

(f) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C., 20423. Requests for such exception must be submitted in writing, or confirmed in writing and must clearly state the points at which such exceptions are requested and the reason therefor.

(g) *Rules and Regulations Suspended.* The operation of all rules, regulations, or tariff provisions is suspended insofar as they conflict with the provisions of this order.

(h) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(i) *Effective date.* This order shall become effective at 12:01 a.m., December 22, 1978.

(j) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 10304-10305 and 11121-11126)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Robert S. Turkington not participating.

NANCY L. WILSON,  
Acting Secretary.

(FR Doc. 78-36041 Filed 12-26-78; 8:45 am)

#### [7035-01-M]

#### SUBCHAPTER B—PRACTICE AND PROCEDURE

(Ex Parte No. 55 (Sub-No. 26))

#### PART 1100—RULES OF PRACTICE

##### Protest Standards in Motor Carrier Application Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Administrative review of final rules

SUMMARY: Several motor carriers have filed petitions seeking administrative review and a stay of the effective date of the final rules adopted in the title proceeding, 43 F.R. 50908 (1978). Each of the material issues raised in these petitions will be treated separately below. The final rules have been modified slightly in some respects.

EFFECTIVE DATE: The rules (43 F.R. 50908 (1978)) as modified by this notice will apply to all motor carrier applications filed on and after March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Telephone: 202-275-7292.

SUPPLEMENTARY INFORMATION: Material issues raised in petitioners' pleadings and the Commission's response are delineated below:

1. Do the provisions of subparagraph (e) of Special Rule 247 apply to petitions filed under subparagraph (1), *Intervention with leave in motor carrier application proceedings*? Yes. Petitioners may request oral hearing, cross-examination, or other forms of procedural relief under subparagraph (e). Where material issues are in dispute or where such relief otherwise would be appropriate, it will be granted upon request. The following language is added to subparagraph (1) of Special Rule 247:

(4) Except to the extent that they are inconsistent with the provisions of this subsection, the provisions of subparagraph (e) of this section apply to protests filed under this section.

Paragraph (e)(9) of Special Rule 247 also is modified to read:

(9) In motor carrier application proceedings, the provisions of paragraphs (k) and (l) of this section, to the extent they are inconsistent with this subsection, shall apply.

2. The time limitations provided for filing and responding to appeals under subparagraph (m) are unrealistically brief and tend to favor parties with

<sup>1</sup> Motor Freight Express, Brown Transport Corp., Refrigerated Transport Co., Inc. *et al.*, and Motor Carriers Central Freight Ass'n, *et al.*



representatives based in the District of Columbia area. Although, of necessity, time limits provided in subparagraph (m) are brief, they correspond with time limits now provided for appeals from intervention decisions. We agree, however, that parties with representatives in the District of Columbia area may be favored. To offset this advantage, service and filing dates will be measured from the date material mailed from or to the Commission is postmarked. The following sentence will be added to subparagraph (m) of Special Rule 247:

For purposes of measuring time periods under this subparagraph, the date on which material is postmarked will govern.

3. Will joint line carriers which otherwise qualify under the provisions of subparagraph (k) be permitted to intervene automatically in an application proceeding? Yes. Subparagraph (k) of Special Rule 247 is revised to read as follows:

(k) *Intervention without leave in motor carrier application proceedings.* Intervention without leave will be allowed in motor carrier application proceedings by persons supporting the application and by a carrier (or carriers performing a joint line operation) that files, within 30 days of the date of publication of application in the FEDERAL REGISTER, a petition showing that it

4. What is "within the scope of the application" where applications for regular route authority are involved? Since regular route authorities may be tacked, it has been argued that the true scope of an application cannot always be determined from the published notice. Where tacking is contemplated, however, applicant must so indicate in its application. This will be noted in the FEDERAL REGISTER notice so that the true scope of an application may be determined by interested persons who then may petition for intervention with or without leave, as appropriate.

5. How can a carrier not qualified to intervene automatically under subparagraph (k) inquire into the bona fides of an application? Any questions with respect to a particular application may be raised in a petition for intervention with leave. These questions will be examined thoroughly and, where it ap-

pears that intervention is necessary to resolve them, it will be granted.

6. Appendix II to our previously final rules in this proceeding was incorrectly entitled "Petition to Intervene without leave." The title of Appendix II should be corrected to read: "Petition to Intervene with leave."

7. *Effective date.* Additional time is required to enable the Commission to establish internal procedures for processing intervention petitions. Accordingly, the final rules (43 F.R. 50908 (1978)) as modified by this notice will apply to all motor carrier applications filed on and after March 1, 1979.

Decided December 18, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp, Commissioner Stafford dissenting.

NANCY L. WILSON,  
Acting Secretary.

Commissioner Stafford, dissenting: I would grant the petitions and stay the decision.

[FR Doc. 78-36040 Filed 12-26-78; 8:45 am]

[4310-55-M]

#### Title 50—Wildlife and Fisheries

### CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

#### PART 33—SPORT FISHING

#### Opening of Tamarac National Wildlife Refuge, Minnesota, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Tamarac National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource and will provide additional recreational opportunity to the public.

DATES: January 1, 1979, through December 31, 1979, in accordance with all applicable Minnesota state fishing laws.

#### FOR FURTHER INFORMATION CONTACT:

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, MN 56578, Telephone Number 218-847-4355

#### SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the Tamarac National Wildlife Refuge, Minnesota, only on the areas designated by signs and maps as being open to fishing. These areas comprising 13,675 acres are delineated on maps available at the refuge headquarters and from the Office of the Regional Director, Region 3, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Sport Fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. Only that part of Tamarac Lake north of the water control dike is open during all regular state fishing seasons.

2. Big Egg, Two Island, Wauboose, Lost, and Blackbird Lakes are open only from the state seasons's opening in May through Labor Day.

3. Bank fishing 50 yards either side of the Ottertail River bridges on County Roads No. 26 and No. 126 is the only stream fishing permitted.

4. No areas other than those previously listed are open for fishing at any time.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish & Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

OMER N. SWENSON,  
Refuge Manager, Tamarac National Wildlife Refuge Rochert,  
MN 56578.

DECEMBER 15, 1978.

[FR Doc. 78-35976 Filed 12-26-78; 8:45 am]

## proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6714-01-M]

### FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Chapter III]

#### INTERNATIONAL BANKING ACT Implementation of Provisions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FDIC is considering a series of amendments to its current regulations and a number of new regulations which will implement certain provisions of the International Banking Act of 1978. (Pub. L. 95-369, 92 Stat. 607, 12 U.S.C. 3101 *et seq.*). Under the International Banking Act, foreign banks operating in the United States through branches, agencies or commercial lending companies are subject to Federal supervision and regulation similar to that imposed on like activities of domestic banks.

DATE: Comments must be received by FDIC on or before January 19, 1979.

ADDRESS: Comments should be addressed to Alan R. Miller, Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

#### FOR FURTHER INFORMATION CONTACT:

Edward T. Lutz, Examination Specialist (telephone 202-389-4389), or Margaret M. Olsen, Attorney (telephone 202-389-4433).

SUPPLEMENTARY INFORMATION: The International Banking Act, which became law on September 17, 1978, requires certain branches of foreign banks to obtain Federal deposit insurance. Other branches may apply for deposit insurance if they so desire. A number of issues have been raised regarding the criteria for mandatory deposit insurance, the mechanism for providing deposit insurance and the asset pledge requirements for insured branches. FDIC's staff has considered these issues and has reached preliminary conclusions regarding alternative courses of action. However, since the International Banking Act has just become law and the staff lacks experience with its provisions, FDIC has decided to invite public comment on

both the issues raised and the alternatives presented.

All communications received by FDIC on or before January 19, 1979, will be considered by FDIC's Board of Directors before taking action on any changes in FDIC's current regulations or adopting any new regulations. The alternatives discussed in this notice may be changed or possibly eliminated, and others adopted, in the light of the comments received. All comments submitted will be available in the office of FDIC's Executive Secretary, Room 6108, 550 17th Street, N.W., Washington, D.C. 20429, both before and after the closing date for comments, for review by interested persons. If FDIC's Board of Directors decides to proceed further after considering the comments received in response to this notice, FDIC will issue a notice of proposed rulemaking.

#### MANDATORY DEPOSIT INSURANCE

Sections 6 (a) and (b) of the Act distinguish between the two types of domestic branches of foreign banks: State branches and Federal branches. State branches will be subject to mandatory insurance if they accept deposits of less than \$100,000 and are located in States that require State chartered banks to obtain deposit insurance. Federal branches will be required to have deposit insurance if they accept deposits of less than \$100,000. However, determinations may be made by the FDIC in the case of State branches and by the Office of the Comptroller of the Currency (OCC) in the case of Federal branches that the acceptance of deposits of less than \$100,000 may not constitute domestic retail deposit activity requiring deposit insurance.

The staff has identified several pivotal issues in implementing the mandatory insurance provisions, and recommends the following approaches toward their resolution.

#### ISSUE 1—THE MEANING OF THE PHRASE "DEPOSITS OF LESS THAN \$100,000"

The Act does not define the term "deposits of less than \$100,000." There are several alternatives for interpreting the \$100,000 limitation:

#### Alternatives:

- 1—The initial deposit;
- 2—A minimum account balance;
- 3—An average account balance; or

4—Each deposit without regard to the existing account balance.

#### Recommendations:

The staff recommends the adoption of Alternative 1 as the standard for determining whether the dollar limitation has been met. This approach would allow the account balance to subsequently decline below the \$100,000 limitation and permit the acceptance of additional deposits of less than \$100,000 without triggering the mandatory insurance provision. Acceptance of an initial deposit of less than \$100,000 would require deposit insurance unless the FDIC finds that the deposit does not qualify as "domestic retail deposit activity requiring deposit insurance." The other alternatives might either unduly restrict the business affairs of the depositor and the branch or introduce an unnecessary degree of complexity and burden in administering and complying with the statute. If the depositor elects to place the initial deposit of \$100,000 or more in different types of accounts (e.g., demand, savings, or time) the deposit in each type of account should be aggregated provided the deposit is held in the same right and capacity. However, in keeping with historical treatment of insured deposits, deposits not held in the same right and capacity would not be aggregated.

#### ISSUE 2—DEFINITION OF THE PHRASE "DOMESTIC RETAIL DEPOSIT ACTIVITY REQUIRING DEPOSIT INSURANCE"

Although a branch accepts deposits of less than \$100,000, it may be exempted from mandatory insurance if it does not engage in a domestic retail deposit activity requiring deposit insurance protection. In determining whether to grant an exemption, the FDIC must consider the size and nature of the depositor and the size and nature of the deposit account.

The Act's legislative history indicates that Congress was primarily concerned with affording deposit insurance protection to individuals who are citizens or residents of the United States. Similar concern was not voiced for domestic commercial enterprises. Nevertheless, the individual/commercial dichotomy raises difficult public policy decisions relative to:

1. Accounts of officers of corporate customers, embassy or consulate employees, and branch employees; and



## 2. Accounts of small domestic business concerns.

### Recommendations:

With respect to category 1, the staff is aware that branches of foreign banks may hold these types of accounts in nominal volume for business reasons or they may hold them as an accommodation to these individuals. These classes of depositors would appear to be within the definition of a citizen or resident of the United States. The question is whether these deposits would signify domestic retail deposit activity. The staff seriously considered excluding these classes of depositors from the definition of domestic retail deposit activity; however, in the staff's opinion, congressional intent to afford deposit insurance protection to domestic individuals may render this approach inconsistent with the purposes of the Act. Accordingly, the staff recommends the inclusion of category 1 depositors in the definition of domestic retail deposit activity.

With respect to category 2, the staff believes that deposits of small domestic corporations, partnerships, and other business entities should be afforded the benefits of deposit insurance. In a number of cases, such businesses essentially represent the economic endeavors of one or a few individuals who, consistent with congressional intent, warrant deposit insurance protection. In addressing this issue, the staff has been unable to find a clear-cut, universally accepted definition of a small business. Accordingly, the staff recommends that, with the exception of interbank deposits, foreign branches' acceptance of initial deposits of less than \$100,000 from domestic corporations, partnerships, and other business entities would mandate deposit insurance.

The staff has formulated the following list of depositors who would not appear to require deposit insurance protection, and the staff recommends that acceptance of initial deposits of less than \$100,000 from these classes of depositors would, by regulation, be automatically exempt from the mandatory insurance requirements:

1. Foreign corporations, partnerships, and other business entities organized and existing under the laws of a foreign country;
2. Foreign governments, any political subdivision and agencies thereof;
3. International agencies including but not limited to United Nations, World Bank, World Health Organization, International Monetary Fund, and Inter-American Development Bank;
4. The U.S. Government, any State Government, any political subdivision and agencies thereof;

5. Natural persons who are citizens of a country other than the United States and are not residents of the United States;

6. Any other person if the deposit (a) is to be transmitted abroad; (b) is to provide collateral or payment for extensions of credit by the branch; (c) represents proceeds of collections abroad that are to be used to pay for goods exported or imported or for other direct costs of export or import, or periodically transferred to the depositor's account at another financial institution; or (d) represents proceeds of extensions of credit by the branch;

7. Officer checks, expense checks, or payroll checks issued by the branch; and

8. Deposits of domestic commercial banks.

Specific comment is requested on whether additional classes of depositors should be included in the foregoing list.

### ISSUE 3—DEPOSIT INSURANCE REQUIREMENTS OF STATE BANKING DEPARTMENTS

Pursuant to section 6(b) of the Act, a foreign branch may be subject to mandatory deposit insurance if it accepts deposits of less than \$100,000 and is located in any State in which the deposits of a bank organized and existing under the laws of that State are required to be insured. In interpreting this portion of the Act, the staff has identified two possible approaches to defining the term "requires deposit insurance for State chartered banks":

#### Alternatives:

- 1—A requirement by statute or regulation; or
- 2—A requirement by statute, regulation, or consistently applied policy.

Based on written inquiries to the 50 State Banking Departments, most States require State chartered banks to obtain deposit insurance. However, the large majority of States require deposit insurance as a matter of policy rather than by statute or regulation.

The staff believes that the purpose of this provision was to provide for equal treatment of State licensed foreign branches and State chartered banks operating in the same State. In the staff's opinion, a statute or regulation is clearly a State requirement within the meaning of this provision. However, there is a question as to whether a policy requiring deposit insurance for State chartered banks should be considered a requirement under the Act.

#### Recommendation:

The staff recommends the adoption of Alternative 2. The staff has concluded that Banking Department and Bank Commissioner policies are bind-

ing on State chartered banks and, as such, should be considered as a requirement for the purposes of the Act. Accordingly, the staff recommends that branches of foreign banks accepting initial deposits of less than \$100,000 shall be required to obtain deposit insurance if State chartered banks are required to be insured pursuant to statute, regulation, or policy of the State Banking Department or the Bank Commissioner.

### PLEDGE OF ASSETS—SURETY BOND REQUIREMENTS

Section 6(c)(1) of the Act states that "Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the FDIC or as the FDIC may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the FDIC may require or approve, for the purpose set forth in paragraph (4) of this subsection."

Paragraph (4) states, "The purpose of surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the FDIC shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks."

This section of the Act raises a number of policy issues. The issues and the results of staff deliberation follow.

### ISSUE 1—USE OF THE PROCEEDS OF THE PLEDGED ASSETS/SURETY BOND

It may be that the language of the statute and the legislative history suggest that the FDIC should assume a preferred position vis-a-vis the pledged assets/surety bonds. Therefore, in the event of liquidation of an insured branch, the FDIC would hold these assets to protect the deposit insurance fund from a loss of principal on cash disbursements and take these assets prior in time and right to any creditor of the branch.

An alternative approach, and one apparently in keeping with the concept of national treatment as well as equitable treatment of bona fide creditors, is that the proceeds derived from the pledge of assets/surety bond should be included in the receivership estate and should be shared pro rata with uninsured depositors and general creditors. This action would be consistent with the methodology employed in domestic bank liquidations. It is not clear under the Act whether the FDIC

should depart from methods employed in domestic bank liquidations in attempting to prevent loss to the insurance fund. Nevertheless, adherence to methods used in domestic bank liquidations raises the possibility that overseas creditors of the parent bank, assuming a simultaneous failure of the parent institution, in filing claims against the branch receivership estate might gain access to the pledge of assets/surety bonds, thereby diminishing the return to the FDIC and the other creditors of the domestic branch. Staff discussion has identified three possible solutions to this issue.

#### Alternatives:

- 1—Assume a preferred interest solely for the benefit of the FDIC;
- 2—Share the proceeds of pledged assets/surety bonds with domestic creditors; or
- 3—Share the proceeds with all creditors.

By choosing the first alternative, the FDIC would be certain of recovering a portion of its cash disbursement in connection with a foreign branch liquidation. This approach would exclude the claims of creditors of the parent institution from this portion of the branch receivership estate. This alternative would work to the detriment of uninsured depositors and other general creditors by excluding their claims from the pool of assets/bonds. However, it is believed by some staff members that this approach would be consistent with the concept of providing some measure of additional protection to the deposit insurance fund.

Alternative 2 would require the sharing of the proceeds with domestic creditors only and would provide a measure of protection against overseas claims of parent bank creditors. It also would ensure some recovery for domestic uninsured depositors and general creditors and would be more consistent with the disposition of the receivership estate in domestic bank failures. The third alternative would require a pro rata sharing of the pledge with all creditors but could result in overseas creditors of the parent bank gaining access to these assets.

#### Recommendations:

The staff recommends the adoption of Alternative 1. It is believed that by adopting this approach, the percentage of assets pledged to the FDIC could be held to a lower level.

### ISSUE 2—AMOUNT OF THE PLEDGE OF ASSETS/SURETY BONDS

The language of section 6(c)(1) is sufficiently broad in scope by virtue of the clause "in such amounts and of such types as the Corporation may require or approve" to include the extremes of a zero pledge or a

pledge equivalent to 100 percent of the FDIC's insured deposit liability or any amount in between. In evaluating this matter, FDIC staff has carefully considered, among other things, the testimony in the United States House of Representatives and the United States Senate, the requirements imposed by State Banking Departments, and the requirements imposed on American banks operating abroad. Given the unique risks of insuring the deposits of an entity whose parent is beyond the FDIC's jurisdiction, there is a clear need for some additional measure of protection in the form of a pledge of assets or surety bonds. The staff is keenly aware that a stringent requirement could severely hamper the operations of the branch.

#### Recommendations:

The staff recommends a pledge of assets linked to the total liabilities of the branch (excluding amounts due to related entities). The staff further recommends a minimum pledge requirement in the range of 5 to 8 percent of total liabilities, with a final decision on a fixed percentage being deferred pending the resolution of the issues relating to the use of the proceeds of the pledged assets/surety bond and the maintenance of assets payable in the United States (see Issue 3 which follows). The Board of Directors will retain the prerogative to require additional amounts as circumstances warrant. In the case of newly organized branches, the requisite pledge would be tied to projected total liabilities at the end of the first year of operations, with the FDIC reserving the right to request additional amounts if projections are exceeded.

### ISSUE 3—ASSET MAINTENANCE RULE

Although the pledge of assets provides a measure of protection to the deposit insurance fund, these amounts would be insufficient to meet all creditor claims in the event of liquidation. As such, there is a need to impose additional requirements to help ensure that sufficient assets payable in the United States are maintained to meet this contingency. A number of States have provided for this concern by imposing, by statute or regulation, the New York 108 percent rule or a comparable mechanism.

#### Recommendation:

The staff recommends the adoption of a regulation imposing requirements similar to the New York State 108 percent rule for insured foreign branches. Specific comments are requested on this matter.

### ISSUE 4—TERMS OF THE PLEDGE OF ASSETS

The staff believes that when the FDIC accepts asset pledges the quality and marketability of assets pledged as

well as the assurance of payment within the United States should be emphasized. The staff recommends that cash deposits payable in the United States (including negotiable certificates of deposits from domestic commercial banks and domestic branches of foreign banks not directly related to the insured branch), interest bearing bonds, notes, and debentures of the United States or of any agency or instrumentality thereof or guaranteed by the United States would be acceptable. The staff favors the pledging of commercial paper or bankers acceptances provided they meet credit quality standards (restricting acceptances to those payable at domestic commercial banks and domestic branches of foreign banks consistent with the concept of ensuring that payment is made within the United States). With respect to State, county, and municipal obligations, acceptable pledges should be restricted to obligations rated "A" or better by Moody's or Standard and Poors (conflicts in ratings should be resolved in favor of the lower of the two ratings). Finally, obligations of Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development (World Bank) are considered acceptable asset pledges.

The staff recommends that pledged assets be held under the control of the appropriate Regional Director at an approved depository ordinarily within the city where the branch is located. Federal branches are specifically permitted to maintain deposits or investment securities with a member bank designated by the foreign branch (see section 4(g)(1) of the Act). Accordingly, it is logical to follow similar procedures for insured State branches but also to allow insured State nonmember banks to function as the depository. Safekeeping fees would be paid by the insured branch.

Insured branches should be permitted to substitute approved types of assets (as described above) as they may desire. However, the assets may be released only with the signature of the Regional Director or the Regional Director's designee.

Interest on pledged assets should accrue to the insured branch.

The staff recommends that asset pledges be a contractual obligation between the parent bank and the FDIC. The contract should specify matters including but not limited to the purpose of the pledge, the types of acceptable assets, the rights of substitution, as well as stipulation of the distribution of proceeds in the event of liquidation.



# ISSUE 8—STATE BANKING DEPARTMENT PLEDGE OF ASSET REQUIREMENTS

The staff is aware that the States where foreign branches are situated have pledge-of-asset requirements for the purpose of ensuring that depositors and other domestic creditors are protected in the event of a branch failure. This raises the issue of whether foreign bank branches must meet the pledging requirements of both the States and the FDIC.

The staff believes that separate pledges to State Banking Departments and to the FDIC could result in a substantial burden to foreign branch operations and, to the extent practicable, should be avoided. The staff also believes the primary purpose of a State Banking Department's pledge of asset requirements (e.g., protection of depositors) is largely fulfilled by the branch's acquisition of deposit insurance.

## Recommendation:

The staff recommends consulting with the State Banking Departments on this matter with the objective of determining whether the aforementioned pledge of assets formula can serve a dual purpose.

# ISSUE 6—SURETY BOND FEASIBILITY

Based on preliminary research conducted by FDIC staff, bonding companies have shown very little interest in underwriting these types of instruments. Therefore, the staff does not anticipate the use of surety bonds, at least initially. Preliminary views of the surety bond option versus pledging assets point to the necessity of evaluating the positive and negative characteristics of the instruments (i.e., bonds are generally less liquid and will involve analysis of the financial standing of the bonding company). Nevertheless surety bonds may be advantageous in a liquidation because they represent an item of value in addition to assets held in the receivership estate of a failed branch. In summary, it is difficult at this time to render a judgment on how the magnitude of bonds and assets should be related.

## Recommendation:

In view of the current lack of experience with these instruments, the staff recommends that regulations covering this topic provide the Board of Directors flexibility in determining suitable sureties and terms and amounts of such instruments. Specific comments are invited on this subject.

# DEFINITION OF INSURED DEPOSIT

Section 6(c)(4) amends section 3(m) of the Federal Deposit Insurance Act by adding the following to the definition of insured deposit:

"(2) In the case of any deposit in a branch of a foreign bank, the term 'insured deposit' means an insured deposit as defined in paragraph (1) of this subsection which—

"(A) Is payable in the United States to—

"(i) An individual who is a citizen or resident of the United States;

"(ii) A partnership, corporation, trust or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State; or

"(iii) An individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

"(B) Meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof."

The foregoing passages provide the FDIC with wide latitude in defining an insured deposit. The statutory language explicitly provides for deposit insurance only if the deposit is payable in the United States to a domestic citizen, resident, or business entity. The accounts of nondomestic individuals or business entities may, at the Board of Directors' discretion, be considered insured deposits provided the depositor has sufficient business and financial relationships to warrant deposit insurance coverage consistent with the purposes of the Act. The discretion afforded to the Board of Directors to insure only certain accounts is in contrast to insurance afforded deposits in domestic banks where all deposits are insured (to the prescribed maximum amount) without regard to the origin of the deposit.

In analyzing this issue, the staff has identified two possible courses of action:

## Alternatives:

1—Restrict the definition of insured deposits to domestic citizens, residents, and business entities and to foreign depositors with sufficient financial nexus to warrant deposit insurance coverage; or

2—Insure all deposits of the branch.

## Recommendations:

In weighing these alternatives, the staff has considered the fact that Alternative 1 requires a workable definition of the terms resident and sufficient financial nexus to the United States. The adoption of this alternative would require the formulation of control procedures within the branch

to ensure that new deposits are properly segregated as insured and uninsured. A particularly difficult problem would be changes in the status of the depositor. Additionally, there would be a need for a reporting and record keeping system to ensure that all depositors requiring deposit insurance are properly categorized for assessment purposes. Finally, the staff believes that this approach would be contrary to the theme of national treatment, one of the primary purposes of the Act, because it would treat deposits of foreign branches differently than deposits of domestic banks.

The staff recommends the adoption of Alternative 2. Alternative 2 would eliminate the need to define certain terminology and significantly reduce the need for control and reporting mechanisms. It is the staff's view that the Board of Directors, in exercising its discretion, may insure all foreign deposits. This approach would place foreign branches on an equal footing with domestic bank counterparts.

In the event of an imminent failure of an insured branch and its parent bank, there is concern for a massive shift of deposits from the parent to the branch for the sole purpose of obtaining the benefits of deposit insurance protection. The staff recommends that the regulations give the FDIC flexibility in determining whether deposits placed in the branch shortly before its closing are bona fide and warrant deposit insurance coverage.

# ASSESSMENTS

Consistent with the proposed position on insured deposits, the staff recommends that assessments be paid on the entire deposit structure of the branch in accordance with the rules prescribed in Part 327 of the FDIC's Rules and Regulations. This approach would place foreign branches on an equal footing vis-a-vis domestic bank counterparts.

# REPORTING

The Act amends section 7(a)(1) of the Federal Deposit Insurance Act by requiring each foreign bank with an insured branch to file reports of condition with the FDIC in a manner similar to reports required by domestic banks. In developing required reports, the FDIC is authorized to differentiate between domestic banks and foreign banks to the extent necessary to avoid hardship to foreign banks without compromising regulatory effectiveness.

Staff members of the three Federal bank regulatory agencies are working toward the development of a uniform reporting system for domestic operations of foreign banks. Pursuant to

section 309(4)(b) of the FDIC's Rules and Regulations, domestic bank reports of condition may be made publicly available at the FDIC's discretion. Presently, the FDIC makes all such reports available upon request. The staff is cognizant of the concern expressed by foreign bankers that disclosure of condition reports of foreign branches may be misleading because they reflect only a segment of the entire enterprise. Specific comments are requested on whether or not these reports should be publicly available.

By direction of the Board of Directors dated December 20, 1978.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
ALAN R. MILLER,  
Executive Secretary.

[FR Doc. 78-36044 Filed 12-26-78; 8:45 am]

[6714-01-M]

# FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 337]

# UNSAFE AND UNSOUND BANKING PRACTICES

## Insider Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed amendments to regulation.

SUMMARY: The FDIC is withdrawing from consideration the proposed amendments to its regulation dealing with insider transactions (12 CFR 337.3) which were published for comment on January 31, 1978 (43 FR 4051). The FDIC is taking this action because the recently enacted Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRIRCA) preempts much of the subject matter of the proposed amendments.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Alan J. Kaplan, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, telephone (202) 389-4433.

SUPPLEMENTARY INFORMATION: On January 31, 1978, the FDIC published for comment in the FEDERAL REGISTER proposed amendments to its regulation dealing with insider transactions of insured State nonmember banks. The insider transaction regulation, which has been in effect since May 1, 1976, is intended to minimize abusive self-dealing and overreaching by bank insiders through the establishment of procedures designed to ensure that bank boards of directors supervise insider transactions effectively and to better enable FDIC examiners to identify and analyze insider transactions.

Among other things, the proposed amendments would have specified the circumstances under which the FDIC considers an insider transaction to be an unsafe or unsound banking practice, prescribed specific reporting and review requirements with respect to correspondent accounts and certain bank stock loans, and made certain other language changes for purposes of clarity.

As a result of the recent enactment of FIRIRCA, the FDIC is reviewing its insider transaction regulation and the proposed amendments thereto. The initial review indicates that certain provisions of FIRIRCA preempt portions of the proposed amendments.

For example, the proposed amendment relating to correspondent accounts would have required each insider to report in writing to the bank's board of directors all bank stock loans made to the insider and certain of the insider's relatives by a financial institution with which the bank maintains a correspondent account. The bank's board of directors would have been required to review, at least annually, all of the bank's correspondent accounts to ensure their fairness to the bank.

FIRIRCA's provisions relating to correspondent accounts go much further. FIRIRCA prohibits all preferential loans to insiders (executive officers, directors, and 10% shareholders) of correspondent banks, authorizes the FDIC to collect substantial civil fines for violations, and imposes certain reporting requirements on banks and their insiders regarding loans from correspondent banks. It is therefore unnecessary for the FDIC to adopt its proposed amendments relating to correspondent accounts.

Similarly, FIRIRCA covers a number of other issues addressed in the proposed amendments (e.g., prior board of directors' approval of certain insider loans; definitional description of "preferential" loans; and enforcement provisions).

In view of the foregoing, the FDIC has determined that rulemaking action on the proposed amendments is not appropriate at the present time and that the proposed amendments should be withdrawn. The withdrawal of this proposal, however, does not preclude the FDIC from issuing similar proposals in the future or commit the FDIC to any course of action.

Accordingly, the proposed amendments to 12 CFR 337.3 which were published for comment in the FEDERAL REGISTER on January 31, 1978 (43 FR 4051) are hereby withdrawn.

By order of the Board of Directors, dated December 20, 1978.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
ALAN R. MILLER,  
Executive Secretary.

[FR Doc. 78-35932 Filed 12-26-78; 8:45 am]

[6320-01-M]

# CIVIL AERONAUTICS BOARD

[PDR-59; Procedural Regulations Docket  
34304; Dated: December 21, 1978]

[14 CFR Parts 302 and 321]

# RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

## UNUSED AUTHORITY PROCEDURES

### Notice of Proposed Rulemaking

DECEMBER 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes substantial revisions of the rules governing unused authority under the Airline Deregulation Act of 1978. The changes include (1) new names, format requirements, and filing deadlines for certain existing types of documents; (2) new types of documents; (3) a drawing or lottery to establish priorities among applications and incumbent carriers' notices of intent to begin service that are filed on the same day; (4) procedures for disposition of these filings; and (5) interpretations of some provisions of the Act.

DATE: Comments by January 4, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Send 20 copies of comments to Docket 34304, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: The unused or "dormant" authority provision of the Federal Aviation Act, section 401(d)(5), was added by the Airline Deregulation Act of 1978, Pub. L. 95-504. In anticipation of applications, and incumbent carriers' notices of intent to begin service, to be filed upon the signing of the Deregulation



Act, we established rules governing unused authority proceedings. These rules are found in Subpart R of 14 CFR Part 302, *Rules of Practice in Economic Proceedings*. (PR-180, October 18, 1978; 43 FR 49529, October 24, 1978.) We later amended Subpart R to allow applications to include page citations instead of actual copies of Official Airline Guide pages used to demonstrate dormancy. (PR-183, November 2, 1978; 43 FR 52021, November 8, 1978.)

This notice proposes substantial revisions of the unused authority rules. In connection with these revisions, the rules would be moved from Subpart R to a new Part 321. The changes include new names, format requirements, and filing deadlines for certain existing types of documents; new types of documents, with corresponding deadlines and service requirements; a drawing or lottery to establish priorities among applications and incumbents' notices filed on the same day; procedures for disposition of these filings; and interpretations of some provisions of the Act.

Carriers that already have been awarded new authority under the unused authority provisions have in a majority of cases until January 20, 1979, to begin service. A new round of applications is likely after that date, since evidently more authority has been granted than can actually be exercised with the aircraft now available. So that we may take final action on this proposal before January 20, comments are due on January 4. Because of the need to provide functioning and fully understood procedures as soon as possible, no extensions of the comment period will be granted.

In the discussion that follows, "subparagraph (A) market" refers to a pair of points governed by subparagraph (A) of section 401(d)(5), where the dormant carrier has a year-round certificate and the points are actually receiving service from not more than one other carrier. Similarly, "subparagraph (B) market" means a pair of points governed by section 401(d)(5)(B), where the dormant carrier has a seasonal certificate and the points are actually receiving service from not more than one other carrier. "Subparagraph (D) markets" and "subparagraph (E) markets", correspondingly, are those receiving actual service from two or more carriers. In the former, the dormant certificates are for year-round service, while in the latter, they are seasonal. The Act prescribes different treatment for each of these types of unused authority.

#### CHANGES FOR EXISTING TYPES OF DOCUMENTS

All documents. All documents would be required to show on their covers which subparagraph of section

401(d)(5) applied to the markets involved. One document could address multiple markets as long as they were covered by the same subparagraph.

Applications. The proposed Part 321 would prescribe a uniform format for applications for unused authority, so that they can be entered quickly into the Board's computer system. The basic information about the markets where authority is sought would be included in a table with a separate, numbered line for each market (pair of points). The lines would be alphabetized by market, and each would contain the following items: market, 26-week period or season relied on, active carriers, inactive carriers, inactive period, and (for subparagraph (A) markets only) whether or not a suspension is requested. Air carriers would be identified by the Official Airline Guide's 2-letter carrier codes. The columns of the table would be labeled accordingly. The method of identifying the cities in a market would differ from that of the present rule in that the Official Airline Guide's 3-letter city codes would be used instead of airport codes, where these differ. (At most cities, they are the same.) At a city served by two or more airports, authority to serve the city ordinarily carries with it authority to serve any or all of its airports. Where the inactive carrier's authority at a city is limited to a particular airport, that limitation would be shown by putting the airport code in parentheses after the city code, e.g., "WAS(IAD)" or "CHI(MDW)". Points that are invariably hyphenated, like Minneapolis-St. Paul, would be shown by a single 3-letter city code (MSP). At points that are sometimes hyphenated and sometimes not, like San Francisco, Oakland, and San Jose, the authority that can be applied for is defined by the inactive carrier's certificate, and would be shown by listing the city codes of the hyphenated cities in the order the cities appear in the certificate, e.g., "SFO/OAK/SJC" if the inactive carrier's certificate hyphenates all three of these cities.

In addition to aiding computer processing, this change in the identification of markets would serve to emphasize "points" (cities or groupings of cities) rather than particular airports, consistently with what we believe to be the intent of Congress in section 401(d)(5). Since what is being awarded under this provision is nonstop authority based on that not used by a certificated carrier, the terms of the incumbent's certificate defining the nonstop authority are controlling.

Citations of the relevant pages from the Official Airline Guide would be included in a separate table in the application, as shown in the example set out in proposed § 321.11(c).

Amendments to applications would be required to restate the relevant lines from the original application that are to be amended, with corrected entries underlined. An amendment could delete markets or correct errors, but not add markets.

It is also proposed that a minimum amount of additional information be required on all applications, so that the Board can verify the certification that the applicant's aircraft meet FAA specifications. This might consist of the aircraft description set forth in proposed § 321.12 for applications requesting suspension of incumbent authority, or some similar data. Comments are requested on what might be the best form and content of this information.

Answers to applications. Answers would include tables using the line format discussed above for applications, with challenged items underlined. There would also be three new columns, showing the applicant, docket number, and code numbers for the type of objection raised by the answer. The code numbers appear in proposed § 321.13(f). The objections would be explained in text to the extent necessary.

Answers would have to be served on the applicant and on those persons who were required to be served by the applicant. For subparagraph (A) and (B) markets, the filing deadline would continue to be 7 calendar days after the application was filed, since section 401(d)(5)(C) requires the Board to act on the application within 15 days. For subparagraph (D) and (E) markets, where the Board has 60 days to act, answers would be due within 14 days.

Incumbent carriers' notices of intent to begin service. These notices, filed under section 401(d)(5)(G), would be retitled "Incumbent's Notice of Intent to Exercise Unused Authority". Each incumbent's notice would be required to include a table similar to that in applications and answers. Each line of the table would identify the market, the 26-week period or season upon which the notice is based, and the date by which the carrier intends to begin service. These notices could be amended in the same manner as applications.

Notices of inauguration of service. The present rule requires these notices to be filed within 7 days after the beginning of service by applicants that are awarded new authority. The proposed rule would extend this requirement to incumbent carriers that have previously filed notices of intent to exercise unused authority, other than carriers whose earlier notices have stated that service had already begun. The present rule requires three copies of these notices to be filed with the Board. The U.S. Postal Service has informally asked the Board to require

that these notices also be sent to it, so that it will be informed of potential new sources for the transportation of mail. This proposal includes such a requirement.

#### NEW TYPES OF DOCUMENTS

Replies to answers to applications. Any person could file a reply to an answer. Replies would be served on the person who filed the answer and everyone whom that person was required to serve. In view of the 15-day limit for Board action in subparagraph (A) and (B) markets, replies would have to be filed within 10 days after the application (i.e., 3 days after answers), and would be considered by the Board only to the extent practicable. In subparagraph (D) and (E) markets, replies would be due 28 days after the application (i.e., 14 days after answers). In these cases, if any answer alleged that the grant of the application would be inconsistent with the public convenience and necessity, the applicant's reply would have to indicate, by frequency and equipment type, what service it would provide and what service (if any) it would discontinue in order to make aircraft available for the new service. This information will enable interested persons to submit informed comments in accordance with section 401(d)(5)(F), which requires a comment period before Board disposition of applications in subparagraph (D) and (E) markets.

Responses to replies. Any person could file one of these further responsive documents for a subparagraph (D) or (E) market. They would be due within 42 days after the application (i.e., 14 days after replies). The opportunity to file these documents would satisfy the requirement of section 401(d)(5)(F) to allow comments.

Answers to incumbents' notices. Since many incumbents' notices were contested by applicants, proposed § 321.22 would formalize these challenges. Any person could file an answer to an incumbent's notice, which would be due within 7 days after the notice for subparagraph (A) and (B) markets and within 14 days for subparagraph (D) and (E) markets. It would be served as if it were an answer to an application. The answer would include a table following the line format of the notice, with two extra columns: one to identify the filer of the notice, and one listing the basis or bases for the objection to the notice. Objections would be coded as follows: "NX": The notice does not comply with section 401(d)(5)(G) or Part 321. "NE": The filer of the notice already filed another one for the same market. "NA": A valid application for the filer's unused authority was filed before the notice. "NR": Any other ob-

jection. Objections would be explained further in the text.

Replies to answers to incumbents' notices. Any person could file such a reply. It would be filed and served as if it were a reply to an answer to an application.

Notices of completion of 13 weeks of service. In addition to filing notices of inauguration of service, carriers awarded new route authority under section 401(d)(5) and carriers that have filed successful incumbents' notices would be required to file with the Board three copies of a notice, within 7 days after completing 13 consecutive weeks of service of at least five round trips per week. (The 13-week minimum service requirement for carriers newly certificated under the dormant authority provisions is discussed below under "Interpretations".) These notices would complete the obligations of both winning applicants and successful incumbent under this rule.

Relinquishments of newly awarded authority and waivers of incumbents' notices. In a number of cases, carriers have notified the Board that they do not intend to commence service in some of the markets awarded to them under section 401(d)(5), or in which their incumbents' notices were successful. We encourage such pleadings, since they open the markets involved to applications by other carriers. The Board does not encourage applicants to apply, or incumbents to give notice, for markets they have no present intention or ability to serve, since such action can operate to preempt applications by other, more willing carriers. However, the Board recognizes the uncertainties involved in the application process, both in the queue process used at the outset and the random allocation (by drawing) process more recently adopted, and hence the likelihood that applicants may sometimes find themselves with more authority than they can use immediately. Since the Congressional purpose is prompt institution of service in unused-authority markets, it is desirable for carriers to waive their claims as soon as they determine they will not be starting service in such a market. The proposed rule would provide for such relinquishments and waivers, and would specify the form and

#### DRAWING OR COMPUTER-BASED LOTTERY

As announced in Order 78-11-152, November 30, 1978, we reconsidered and departed from our original conclusion that the Deregulation Act requires the Board to accept applications strictly in the order of their filing. We determined instead that the order of filings that are essentially simultaneous can be established by a drawing or some other random distribution procedure. Order 78-11-152 de-

fined same-day filings as essentially simultaneous and stated that drawings would be used until after there was an opportunity for comment on other possible procedures. We now propose in the alternative to use either a drawing (OPTION I) or a computer-based assignment of random numbers (OPTION II). For convenience, the discussion that follows uses the term "drawing" for the conventional blind selection from a container and the term "lottery" for the computer-based procedure.

Drawing (OPTION I). This option would codify the procedure that is already being used on an interim basis. For each day on which one or more markets are addressed in multiple (i.e., essentially simultaneous) filings, a separate drawing would be conducted for each such market. Otherwise identical cards bearing the name of each filer (applicant or incumbent carrier) would be placed in an opaque container. The container would be covered and shaken, and then a Board staff member would draw the cards out successively until all have been drawn. The order of the draw would establish the order in which the documents would be considered to have been filed. Drawings would be open to the public. If we adopt the interpretation of "week" that is discussed below, most applications and incumbents' notices will be filed on Mondays. Therefore, drawings would ordinarily be conducted on the first Wednesday after a multiple filing, instead of on Mondays as announced in Order 78-11-152.

The drawing process would not interfere with the filing of answers. In general, questions about the validity of applications and incumbents' notices would be resolved after the drawing. Invalid filings would then merely be disregarded.

Lottery (OPTION II). A random number, generated as discussed below, would be assigned to each market line of each application and incumbent's notice. The numbers assigned to lines that were not duplicated would merely be disregarded. For markets that did receive multiple filings, the filings would be considered as having been made in the order of the random numbers assigned to the corresponding lines, beginning with the lowest. If two or more lines that addressed the same market were assigned a common number, the order of those filings would be established by a blind drawing.

For each application and incumbent's notice, a "seed number" would be determined upon filing as follows: The Docket Section would have available an electric digital clock or watch that, when operated in rapid-advance mode to reset the time, advances at



the rate of 1 hour per second or faster. A Board staff member would press down the rapid advance button for at least 5 seconds and then release it. The time in minutes upon release of the button (2 digits) would be appended to the docket number of the application or notice to provide the seed number.

Using this seed number, the Board's computer would generate a sequence of random numbers using the IBM RANDU random number generator program. These numbers would be assigned in succession to the lines within the application or notice. The assignment would be conducted as soon as practicable after the day of the multiple filings, normally within 3 days. The results, including documentation of the random number procedure, would be announced and made available in the Docket Section. As with drawings, the lottery process would not interfere with the filing of answers. Questions about the validity of filings would ordinarily be resolved after the lottery.

We considered an allocation procedure with "rounds" that would tend to distribute awards evenly among applicants in the manner of the player drafts of professional sports leagues. This proposal does not include such a procedure, however, since it would be unnecessarily complex in light of what we expect in the future to be the small number of markets simultaneously receiving multiple applications, and the varying groupings of carriers filing for those markets.

#### DISPOSITION OF APPLICATIONS AND INCUMBENTS' NOTICES

The proposed Part 321 would also elaborate and codify some of the other procedures announced in Order 78-11-152. In any given market, the Board would dismiss all applications remaining after it recognized an incumbent's notice as "successful", granted an application, denied an application on the ground that no unused authority was available in the market, or denied (in a subparagraph (D) or (E) market only) an application on the ground of inconsistency with the public convenience and necessity. An unsuccessful incumbent's notice would not be dismissed, and in fact could become successful if (1) the winning applicant relinquished its authority or lost it by failing to begin service in time, and (2) the incumbent began service within the time required by its notice.

In a market with more than one carrier holding unused authority, the Board would, with respect to each one, announce that an incumbent's notice was successful, grant an application, or deny an application on public convenience and necessity grounds. Only

then would the remaining applications be dismissed.

Once all applications were dismissed, a market would become open for new applications if a winning applicant or successful incumbent did not begin service within the time required by the Act. Applications could be filed on the first business day after the first day that the statutory noncompliance occurred. New applications would be accepted sooner if a winning applicant filed and served a "Relinquishment of Newly Awarded Authority" or a successful incumbent filed and served a "Waiver of Incumbent's Notice." Carriers would be encouraged to file these documents if they were not going to exercise their newly awarded or protected authority within the statutory time limits.

"Commence service". The Act requires an incumbent air carrier with regular authority to "commence service" within 30 days after filing a successful incumbent's notice, or else to lose the protection afforded by that notice. For seasonal authority, the service must begin within 15 days after the beginning of the next season. Similarly, a successful applicant must "commence service" within 45 days after being awarded the new authority, with a corresponding requirement where the authority is seasonal. Otherwise, the Board is required to revoke the new authority.

In the case of successful incumbents, the meaning of the requirement to commence service is clear, because section 401(d)(5)(G)(i) speaks of:

a notice from such air carrier that it intends to commence service within thirty days of such notice and to provide a minimum of five round trips per week for thirteen consecutive weeks . . . (emphasis added)

Similarly, subparagraph (G)(ii), for seasonal authority, specifies five round-trips per week for the first half of the season. In the case of winning applicants, however, there is nothing in section 401(d)(5)(H) analogous to the emphasized language to give meaning to "commence service." The legislative history is also silent on this question. We propose to interpret these words as though Congress had included wording in subparagraph (H) similar to that of subparagraph (G). A winning applicant would thus have to begin service within 45 days and continue it at the minimum level for 13 weeks (or within 15 days after the beginning of the next season, continued for at least half the season). Although this interpretation is not clearly mandated by the Act, it appears to be the one best calculated to carry out the overall intent of Congress. Clearly Congress wanted actual service to unused authority markets at a level of at least five round trips a week for at least a reasonably extended trial

period, and not merely a token inauguration of service followed by a lapse into inactivity. Section 401(d)(5)(H) instructs the Board to revoke the new carrier's certificate if it fails to commence service within the specified time. We think the fairest scheme is to make the successful applicant's obligation in this respect identical to that of an incumbent carrier upgrading its service: 13 consecutive weeks of service of at least the specified minimum frequency. After this time the successful applicant's authority would become permanent and could only be revoked under other provisions of the Act. Its authority could of course become unused under section 401(d)(5) and thus open to another applicant.

"Week" to mean calendar week.

With several routes that have become dormant since the signing of the Deregulation Act, there has been confusion about the precise day on which applications and incumbents' notices can validly be filed. Under section 401(d)(5)(A), (D), and (G)(i), applications and incumbents' notices cannot be filed until after the last day of a 26-week period during which the incumbent air carrier "fails to provide . . . a minimum of five round-trips per week for at least thirteen weeks." The Director of the Bureau of Pricing and Domestic Aviation explained in Order 78-12-76, issued on December 11, 1978, under delegated authority, that in this provision the phrase "for at least thirteen weeks" is interpreted as modifying "provide," not "fails." Briefly, a 26-week period that includes exactly 13 weeks without the minimum level of service does not qualify, because that period also includes 13 weeks with service at the minimum level. A route becomes unused only after a 26-week period with 12 or fewer weeks of minimum-level service. For example, if a carrier flies two round-trip flights per day until a Tuesday and stops service entirely on Wednesday, the 26-week period ending 13 weeks from that Wednesday does not establish dormancy, since the 13th week of that period would have 12 flights (2 per day for 6 days, 0 on the 7th day). Not until the next Sunday would there be a 26-week period in which the 13th week had fewer than 5 flights (2 per day for 2 days, 0 per day for 5 days). Applications cannot be filed until the day after the 26-week period, Monday in this example. If, instead of stopping all flights, the incumbent continued them in an unusual pattern, the calculation would be more complex.

We agree with the Bureau Director's interpretation of the statutory language, which will continue to be applied without modification until January 19, 1979. We propose, however, for purposes of simplification to modify the application of the statute for peri-

ods ending on and after January 20, 1979. We would consider each "week" to be a calendar week, running from a Sunday through the following Saturday. A 26-week period, similarly, would always end on a Saturday. Since January 20 is a Saturday, there should be no problem in transition. This approach would not only simplify the computation of dormancy periods, but also reduce any advantage that could arise from one applicant's having special knowledge of what actually happened on the allegedly last day of an incumbent's service. This modification by rule would not in any way contravene the intent of Congress in enacting this program, and would go far to eliminate possible errors and misinterpretations.

This interpretation of "week" would be applied throughout section 401(d)(5) and Part 321. Mondays would therefore become the predominant filing days for applications and incumbents' notices, since 26-week periods would end on Saturdays. Similarly, for an incumbent that began service within 30 days of its successful notice (or a winning applicant that began service within 45 days of its award) but did not continue it for the required number of weeks, the failure to continue would occur on a Saturday. Only if the carrier fails to start (on a day other than Saturday) or files a "Relinquishment of Newly Awarded Authority" or a "Waiver of Incumbent's Notice" would the day for filing new applications be other than a Monday.

Accordingly, the Civil Aeronautics Board proposes to amend Part 302 and add a new Part 321 to Chapter II, Title 14, Code of Federal Regulations, as set forth below.

Part 302, *Rules of Practice in Economic Proceedings*, would be amended as follows:

1. Section 302.901 would be amended to read:

#### § 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. However, this subpart does not apply to applications for unused authority under section 401(d)(5) (Part 321) or applications for automatic market entry under section 401(d)(7) (Part 322). For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (Parts 201 and 211 for the form of applications) and orders of the Board.

2. In § 302.908, paragraph (a) would be amended to read:

§ 302.908 Applications for new or modified certificated route authority.

(a) This section applies to all applications filed under this part for new or modified certificated route authority except those filed under Subpart M or N and those filed in response to, and conforming to, an order instituting a route investigation. Except as modified by this section, the rules in Subpart A of this part continue to apply.

Subpart R—§§ 302.1801-302.1812 [Revoked]

3. Subpart R—*Rules Applicable to Unused Authority Proceedings*, would be revoked.

4. The Table of Contents would be amended accordingly.

A new Part 321 would be added, to read:

#### PART 321—UNUSED AUTHORITY PROCEDURES

##### Subpart A—General

- Sec. 321.1 Applicability.
- 321.2 Conformity with Subpart A of Part 302.
- 321.3 Definitions.
- 321.4 Notices of inauguration and completion of 13 weeks of service.
- 321.5 Environmental evaluations and energy information not required.
- 321.6 No conflict with separation of functions rule.

##### Subpart B—Applications for Unused Authority and Related Documents

- 321.10 General requirements for applications.
- 321.11 Contents of applications.
- 321.12 Additional requirements for applications that request suspension of unused authority.
- 321.13 Answers to applications.
- 321.14 Responses to replies.

##### Subpart C—Incumbent Carriers' Notices of Intent To Begin Service and Related Documents

- 321.20 General requirements for incumbent carriers' notices of intent to begin service.
- 321.21 Contents of incumbents' notices.
- 321.22 Answers to incumbents' notices.
- 321.23 Replies to answers to incumbents' notices.

##### Subpart D—Processing of Documents

- 321.30 Simultaneous filings.
- 321.31 Disposition of applications and incumbents' notices.
- 321.32 Successful applicant's failure to commence service.
- 321.33 Successful incumbent carrier's failure to begin service.
- 321.34 Option I: Drawing. Option II: Lottery.

##### Subpart E—Interpretations of the Act's Unused Authority Provisions

- 321.40 "Commence service".
- 321.41 "Week" means calendar week.

AUTHORITY: Secs. 204, 401, and 1001 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, and 771, 92 Stat. 1713; 49 U.S.C. 1324, 1371, and 1481.

##### Subpart A—General

#### § 321.1 Applicability.

This part applies to applications for nonstop route authority where unused authority exists, filed under sections 401(d)(5)(A), (5)(B), (5)(D), and (5)(E), and to notices of incumbents' intent to begin service that are filed under section 401(d)(5)(G).

#### § 321.2 Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

#### § 321.3 Definitions.

As used in this part:

"Application" means an application for nonstop route authority, on the basis of unused authority, under section 401(d)(5)(A), (5)(B), (5)(D), or (5)(E).

"Applicant" means a person who files an application under this part.

"Minimum level" and "minimum level of service" mean the minimum level of service set forth in subparagraph (A), (B), (D), or (E) of section 401(d)(5), as applicable.

"Section 401(d)(5)" refers to the unused authority program of the Act, 49 U.S.C. 1371(d)(5).

#### § 321.4 Notices of inauguration and completion of 13 weeks of service.

(a) Every applicant that is awarded new authority and every carrier that files an incumbent's notice shall file a notice (1) within 7 days after inaugurating service between any pair of points covered by the award or incumbent's notice, and (2) within 7 days after completing 13 consecutive weeks of service of at least five nonstop round trips per week. However, if an incumbent's notice states that service has already begun, the incumbent need not give the inauguration notice required by clause (1) above.

(b) Notices required by paragraph (a) of this section shall be titled "Notice of Inauguration of Service" or "Notice of Completion of 13 Weeks of Service," as applicable. They shall specify on the cover the subparagraph of section 401(d)(5) that governs the market or markets involved, and shall identify the pairs of points between which service has been inaugurated or carried on for 13 weeks.

(c) Notices described in paragraph (a) of this section shall be filed in three copies, marked for the attention



of the Director, Bureau of Pricing and Domestic Aviation.

(d) A copy of each notice described in paragraph (a) of this section shall be served on the U.S. Postal Service Headquarters, Law Department, Transportation Division, Washington, D.C. 20260.

#### § 321.5 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this title, a person filing an application under this part is not required to file an environmental evaluation or energy information with the application.

#### § 321.6 No conflict with separation of functions rule.

Actions taken by the Director of the Bureau of Pricing and Domestic Aviation under delegated authority to administer section 401(d)(5) will not be considered as conflicting with the Board's separation of functions rule, § 300.4 of this chapter.

#### Subpart B—Applications for Unused Authority and Related Documents

#### § 321.10 General requirements for applications.

(a) Each application shall be titled "Application for Unused Authority."

(b) An application may request nonstop authority in more than one market. However, applications shall not include requests for authority under more than one subparagraph of section 401(d)(5).

(c) An application may be amended after filing at any time before it is granted or dismissed to eliminate markets or correct errors, but not to add markets. Markets to be eliminated shall be listed by line number from the original application and city or airport codes as set forth in § 321.11(b)(1). Corrections shall be shown by setting forth the entire line from the table described in § 321.11(b) or (c), as applicable, with the corrected items underlined. Any necessary explanation of the correction shall be included in text or footnotes.

(d) Applications and amendments of applications shall be served on: (1) All air carriers named in the application in accordance with § 321.11(b)(3) or (4).

(2) The airport authority of each airport the applicant proposes to use.

(3) The Federal Aviation Administration.

#### § 321.11 Contents of applications.

Each application shall:

(a) Identify on its cover page the

subparagraph of section 401(d)(5) that governs the application.

(b) Include a table with a separate, numbered line for each pair of points between which the applicant seeks nonstop route authority. The lines shall be alphabetized by the points named in them. Each line shall include the following information, with the columns of the table labeled accordingly:

(1) *Market.* The pair of points as specified in the inactive carrier's certificate, with each point identified by the Official Airline Guide's 3-letter city code. Where the inactive carrier only has authority to serve a point through a named airport, this limitation shall be shown by adding the 3-letter airport code for the airport in parenthesis after the city code. (EXAMPLE: "WAS(IAD)" for Washington, to be served through Dulles International Airport.) Where a point is hyphenated in all or substantially all carriers' certificates, its single 3-letter code shall be used. (EXAMPLE: "MSP" for Minneapolis-St. Paul.) At points that are sometimes hyphenated and sometimes listed separately in certificates, the authority of the inactive carrier or carriers shall be shown by listing the city codes of the hyphenated cities in the order shown in each inactive carrier's certificate. (EXAMPLE: "SFO/OAK/SJC" for San Francisco-Oakland-San Jose.)

(2) *Period of season.* The beginning and ending dates of the 26-week period or season, as applicable, upon which the request for authority is based. If the dates differ for different inactive carriers, each set of dates shall be included. If a split period is relied on because of a strike, the computation

#### OAG EDITION OF —

|              | 5/1/78 | 6/1/78 | 7/1/78 | 8/1/78 | 9/1/78 | 10/1/78 | 11/1/78 |
|--------------|--------|--------|--------|--------|--------|---------|---------|
| ATL-DEN..... | 140    | 143-4  | 151    | 146    | 137    | 142     | 145     |
| DEN-ATL..... | 311    | 315    | 329    | 317-8  | 304    | 313     | 318     |

(d) Certify that the applicant's aircraft meet all applicable requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce.

(e) Certify that the applicant will obtain any necessary operating authority from the Federal Aviation Administration in time to begin exercising the nonstop route authority sought under this part within the time

shall be explained elsewhere in the application.

(3) *Active carriers.* The Official Airline Guide's 2-letter carrier code for each carrier, certificated or not, that has provided the minimum level of service between the points during the period or season described in paragraph (b)(2) of this section.

(4) *Inactive carriers.* The Official Airline Guide's 2-letter carrier code for each air carrier having certificate authority to provide nonstop round-trip service between the points that has not provided the minimum level of service during the time described in paragraph (b)(2) of this section.

(5) *Inactive period.* For each carrier named in paragraph (b)(4) of this section, the beginning and ending dates of below-minimum service during the period or season described in paragraph (b)(2) upon which the request for authority is based.

(6) *Suspension requested.* For applications governed by section 401(d)(5)(A) only: Whether or not the applicant requests suspension of the unused authority of incumbent air carriers.

(c) Include a table that lists, for each pair of points named in the application, the Official Airline Guide pages covering service for the entire 26-week period or season upon which the request for authority is based. There shall be a separate line for service in each direction. The page citations shall be to successive monthly issues of the Official Airline Guide, using consistently the editions of the 1st or the 15th of the month. The table shall be in the format shown in the following fictitious example:

set forth in subparagraph (H)(i) or (H)(ii) of section 401(d)(5), as applicable.

(f) Certify that the applicant is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to the Act.

#### § 312.12 Additional requirements for applications that request suspension of unused route authority.

(a) If an applicant for authority under section 401(d)(5)(A) wants the Board to suspend the unused authority of incumbent carriers as set forth in

section 401(d)(5)(J), its application shall at a minimum include, in addition to the information set forth in § 321.11, the following:

(1) Information specific to each pair of points showing why suspension is necessary to encourage continued service between those points by the applicant;

(2) A list, by filing date and points, of all other applications filed or to be filed on the same day and within the preceding 45 days; and

(3) A description of the aircraft that the applicant intends to use in exercising the authority sought in the current application and all applications filed or to be filed on the same day and within the preceding 45 days. The description shall consist of either a plan for obtaining aircraft, identified by type, that can be verified within 15 days by the Board's staff, or a list of aircraft identified by FAA registration number.

(b) If the Board grants an application that does not include the information set forth in paragraph (a) of this section, the Board will not suspend the unused authority of incumbent carriers.

#### § 321.13 Answers to applications.

(a) Any person may file an answer to an application. If the application is governed by subparagraph (A) or (B) of section 401(d)(5), the answer shall be filed within 7 calendar days after the application is filed. If the application is governed by subparagraph (D) or (E), the answer shall be filed within 14 days after the application is filed.

(b) Answers filed under this section shall be entitled "Answer to Application for Unused Route Authority."

(c) Each answer filed under this section shall identify on its cover page the subparagraph of section 401(d)(5) that governs the application being answered.

(d) Each answer filed under this section shall include a table that, except as set forth in paragraph (e) of this section, repeats the lines included in the application in accordance with § 321.11(b) that are being answered. The items that the answer challenges in each line shall be underlined.

(e) The table required by paragraph (d) of this section shall also include the following three columns:

(1) After the column showing the market (§ 321.11(b)(1)): A column showing the applicant, identified by 2-letter carrier code.

(2) After the applicant column described in paragraph (e)(1) of this section: A column showing the docket number of the application.

(3) After the last column: A column showing the type or types of objection that the answer raises, using the code numbers set out in paragraph (f) of

this section. Each objection shall be explained to the extent necessary in the text of the answer.

(f) Objections shall be identified by the following code numbers:

(1) The application was filed under the wrong subparagraph of section 401(d)(5).

(2) The allegedly inactive carrier does not have certificate authority to provide nonstop service in the market.

(3) The allegedly inactive carrier has certificated nonstop authority, but did not have it throughout the 26-week period or season relied on.

(4) The authority of the allegedly inactive carrier has been suspended by the Board under section 401(g) of the Act, or under section 401(j) by an order that requires the carrier to obtain Board approval before resuming service.

(5) The 26-week period or season relied on includes more than 6 weeks of a labor dispute that interrupted the service of the allegedly inactive carrier.

(6) The authority in question was not unused because the allegedly inactive carrier served the point or points through at least one airport and was not required to serve through more than one airport.

(7) The allegedly inactive carrier in fact provided the minimum level of service.

(8) The unused authority relied on has already been the basis of an award that has not been revoked.

(9) For applications governed by section 401(d)(5)(D) or (5)(E) only: Award of the authority sought would not be consistent with the public convenience and necessity.

(0) Any other objection. (NOTE: This code is "0" not "10".)

(g) Answers filed under this section shall be served on the persons whose applications are being answered and on the persons listed in § 321.10(d).

#### § 321.14 Replies to answers to applications.

(a) Any person may file a reply to an answer to an application.

(b) Replies filed under this section shall be titled "Reply to Answer to Application for Unused Authority" and shall identify on the cover page the subparagraph of section 401(d)(5) that governs the application.

(c) For applications governed by subparagraph (A) or (B) of section 401(d)(5): Replies shall be filed within 10 calendar days after the application is filed, and will be considered by the Board only to the extent practicable.

(d) For applications governed by subparagraph (D) or (E) of section 401(d)(5):

(1) Replies shall be filed within 28 calendar days after the application is filed.

(2) If an answer alleges that grant of the application would be inconsistent with the public convenience and necessity, the applicant's reply shall at a minimum indicate, by frequency and equipment type, what service it will provide and what service (if any) it will discontinue to make aircraft available for the new service.

(3) Replies filed under this section shall be served on the person that filed the answer and on all persons who were required to be served with the answer.

#### § 321.15 Responses to replies.

(a) In the case of an application that is governed by subparagraph (D) or (E) of section 401(d)(5), any person may file a response to a reply filed under § 321.14.

(b) Responses shall be titled "Response to Application for Unused Authority."

(c) Responses shall be filed within 42 calendar days after the application is filed.

(d) Responses shall be served on the person that filed the reply and on all persons who were required to be served with the reply.

#### Subpart C—Incumbent Carriers' Notices of Intent To Begin Service and Related Documents

#### § 321.20 General requirements for incumbent carriers' notices of intent to begin service.

(a) A carrier holding unused authority in a given market that intends to resume nonstop service such as to preclude a grant of authority to another carrier under section 401(d)(5) shall file a notice titled "Incumbent's Notice of Intent to Exercise Unused Authority" (hereafter called "incumbent's notice").

(b) An incumbent's notice may address service in more than one market. However, notices shall not address authority covered by more than one subparagraph of section 401(d)(5).

(c) An incumbent's notice may be amended in the manner set forth in § 321.10(c) for applications at any time before the Board announces by order that it is successful.

(d) An incumbent's notice shall be served on those persons whom the incumbent would be required by § 321.10(d) to serve if it were an applicant for unused authority.

#### § 321.21 Contents of incumbent's notice.

Each incumbent's notice shall:

(a) State on its cover the subparagraph of section 401(d)(5) that governs the authority addressed by the notice.

(b) Include a table with a separate, numbered line for each pair of points between which the carrier filing the notice intends to begin service within



the time set forth in section 401(d)(5)(G)(i) or (G)(ii), as applicable. The lines shall be alphabetized by the points named in them. Each line shall include the following information:

(1) *Market.* The pair of points, identified as set forth in § 321.11(b)(1).

(2) *Period or season.* The beginning and ending dates of the 26-week period or season, as applicable, upon which the notice is based.

(3) *Date.* The date (not more than 30 days after the date of filing) on or before which the carrier intends to begin service between those points.

#### § 321.22 Answers to incumbent's notices.

(a) Any person may file an answer to an incumbent's notice. The answer shall be filed within the time set forth in § 321.13(a) for answers to applications.

(b) Answers filed under this section shall be titled "Answer to Incumbent's Notice."

(c) Each answer filed under this section shall identify on its cover the subparagraph of section 401(d)(5) that governs the notice being answered.

(d) Each answer filed under this section shall include a table that repeats the lines included in the notice in accordance with § 321.21(b) with the air carrier that filed the notice and the basis or bases for the objection to the notice listed at the end of each line. The filer of the notice shall be identified by 2-letter air carrier code. The objections shall be listed by the following 2-letter codes and explained to the extent necessary in the text of the answer:

(1) "NX": That the notice does not comply with the requirements of section 401(d)(5).

(2) "NE": That the filer of the notice has previously filed a similar notice in the same market.

(3) "NA": That a valid application for the filer's unused authority was filed before the notice.

(4) "NR": Any other objection.

(e) Answers filed under this section shall be served as if they were answers filed under § 321.13 to applications.

#### § 321.23 Replies to answers to incumbent's notices.

(a) Any person may file a reply to an answer to an incumbent's notice. The reply shall be filed within the time set forth in § 321.14 (c) or (d), as applicable, for replies to answers to applications.

(b) Replies filed under this section shall be titled "Reply to Answer to Incumbent's Notice," and shall identify on the cover the subparagraph of section 401(d)(5) that governs the notice.

(c) Replies filed under this section shall be served as if they were replies

filed under § 321.14 to answers to applications.

#### Subpart D—Processing of Documents

##### § 321.30 Simultaneous filings.

Applications and incumbents' notices that are filed on the same day will be considered essentially simultaneous. Each application and notice will be treated as a separate filing for each pair of points that it names. These filings will be treated for the purposes of section 401(d)(5) as if they were made in the order established in accordance with § 321.34.

##### § 321.31 Disposition of applications and incumbents' notices.

For each pair of points named in a document filed under this part:

(a) If no air carrier had unused authority within the meaning of section 401(d)(5), the Board will deny all applications.

(b) If the earliest filed valid document that has not been amended to delete those points is an incumbent's notice, the Board will by order announce that the notice is successful and dismiss all applications for authority between those points.

(c) If the earliest filed valid document that has not been amended to delete those points is an application, the Board will dismiss all other applications for authority between those points and, except as set forth in paragraph (d) of this section, grant that application.

(d) If the application is governed by subparagraph (D) or (E) of section 401(d)(5) and the Board finds that issuance of a certificate is inconsistent with the public convenience and necessity, the Board will deny the application.

(e) Unsuccessful incumbents' notices will not be dismissed and may become successful as set forth in § 321.32(c).

(f) If more than one air carrier holds unused authority to provide round-trip nonstop service between those points, the Board will not dismiss any applications in accordance with paragraph (a) or (b) of this section until it has, with respect to each carrier holding unused authority, announced that a notice is successful, granted an application, or denied an application on the ground of inconsistency with the public convenience and necessity.

##### § 321.32 Successful applicant's failure to commence service.

For each award to a person of new certificate authority between a pair of points under section 401(d)(5):

(a) Except as set forth in paragraphs (b) and (c) of this section, if that person does not "commence service" within the meaning of section 401(d)(5)(H) as defined in § 321.40, the

Board will accept new applications for authority between those points on the first business day after the first day that the person is not in compliance with section 401(d)(5)(H).

(b) Except as set forth in paragraph (c) of this section, if that person, before being required by section 401(d)(5)(H) to "commence service" files and serves a "Relinquishment of Newly Awarded Authority" in the manner described in § 321.33(c) for waivers of incumbents' notices, the Board will accept new applications on the first business day after the day that the relinquishment is filed.

(c) If, upon the noncompliance described in paragraph (a) of this section or the filing of a relinquishment described in paragraph (b), there is an outstanding valid incumbent's notice that has not been vitiated by the incumbent carrier's failure to exercise its unused authority, the Board will by order announce that the notice has become successful. Further unused authority proceedings for the pair of points will be governed by § 321.33.

(d) If the Board accepts new applications in accordance with paragraph (a) or (b) of this section or announces in accordance with paragraph (c) that an outstanding incumbent's notice has become successful, it will revoke the previously awarded new certificate authority.

##### § 321.33 Successful incumbent carrier's failure to begin service.

For each pair of points for which the Board has announced that an incumbent's notice is successful:

(a) Except as set forth in paragraphs (b) and (c) of this section, if the incumbent carrier does not begin and maintain service in accordance with section 401(d)(5)(G)(i) or (G)(ii), as applicable, the Board will accept new applications for authority between those points on the first business day after the first day that the incumbent is not in compliance with section 401(d)(5)(G).

(b) If the incumbent carrier, before it is required by section 401(d)(5)(G) to begin service, files a waiver in accordance with paragraph (c) of this section, the Board will accept new applications on the first business day after the day that the waiver is filed.

(c) Air carriers that decide not to begin service in accordance with their successful notices are encouraged to file, in the same docket, a "Waiver of Incumbent's Notice". These documents shall:

(1) Indicate the subparagraph of section 401(d)(5) that governs the notice;

(2) Identify the pair or pairs of points for which the notice is waived;

(3) Identify the Board order announcing that the notices are successful; and

(4) Be served on all certificated air carriers and all persons required by § 321.20(d) to be served with incumbents' notices.

#### OPTION I:

##### § 321.34 Drawing.

(a) For each day on which one or more pairs of points receive essentially simultaneous filings, a drawing will be conducted for each such pair of points as follows: For each person who filed an application or incumbent's notice, a card bearing that person's name will be placed in an opaque container. The cards will be otherwise identical. The container will be covered and shaken thoroughly. A Board staff member will reach into the container and, without being able to see the cards, draw them out successively until all have been drawn.

(b) The order in which the cards are drawn will be the order in which the documents are considered to have been filed.

(c) Drawings will take place on the first Wednesday after the day that the essentially simultaneous documents are filed, unless the filers of those documents are notified otherwise. It will be open to the public. Information about the time and location can be obtained from the Office of the Secretary, Civil Aeronautics Board.

(d) The drawing process will not interfere with the filing of answers in accordance with §§ 321.13 and .22. In general, questions about the validity of applications and incumbents' notices will be resolved after the drawing.

(e) If (1) there is a dispute about the precise date on which authority can be applied for or protected by an incumbent's notice, and (2) documents for that authority are filed on more than one day, then a separate drawing will be conducted for each day's documents. When the correct date is determined, filings before that date will be disregarded. The drawings for filings on and after that date, ordered by date of filing, will establish the order in which the documents are considered to have been filed.

#### OPTION II:

##### § 321.34 Lottery.

(a) Each line from an application (included in accordance with § 321.11(b)) or from an incumbent's notice (included in accordance with § 321.21(b)) will be assigned a random number as set forth in paragraph (b) of this section. For each pair of points for which there are essentially simultaneous filings, those filings will be considered to have been made in the order of the random numbers assigned to the relevant lines, beginning with

the smallest number and ending with the largest. If two or more lines that address the same pair of points are assigned a common number, the order of those filings will be established by a blind drawing.

(b) For each application and incumbent's notice, a sequence of random 6-digit numbers will be generated using the IBM RANDU random number generator program and the seed number derived in accordance with paragraph (c) of this section. These random numbers will be assigned in succession to the lines of the application or notice.

(c) The Docket Section will have available an electric digital clock or watch that, when operated in a rapid-advance mode to reset the time, advances at the rate of 1 hour per second or faster. Each application and incumbent's notice will, upon filing, be assigned a seed number as follows: A Board staff member will press down the rapid advance button on the clock or watch for at least 5 seconds and then release it. The time in minutes upon release of the button (2 digits) will be appended to the docket number of the application or notice.

(d) Random numbers assigned to lines of applications or notices that are not duplicated by lines of other applications or notices will be disregarded.

(e) The process described in paragraphs (a) and (b) of this section will be conducted as soon as practicable after the day on which essentially simultaneous filings are received. The results, including documentation of the random number procedure, will be announced and made available in the Docket Section.

(f) [Same as paragraph (d) of OPTION I, except that "drawing" is replaced by "lottery".]

(g) [Same as paragraph (e) of OPTION I, except that "drawing" is replaced by "lottery".]

#### Subpart E—Interpretations of the Act's Unused Authority Provisions

##### § 321.40 "Commence Service."

(a) The Board interprets the requirement of subparagraph (H)(i) of section 401(d)(5) that air carriers issued certificates under subparagraph (A) or (D) "commence service pursuant to such certificate within forty-five days of such issuance" as follows: The air carrier shall begin to provide service within 45 days and provide a minimum of 5 round trips per week for the first 13 full calendar weeks after the day that it begins service.

(b) The Board interprets the requirement of subparagraph (H)(ii) to "commence service pursuant to such [seasonal] certificate within fifteen days after the beginning of the first such season which begins on or after

the date of such issuance" as follows: The air carrier shall begin to provide service within 15 days after the beginning of the season and provide a minimum of 5 round trips per week for the first half of the season.

##### § 321.41 "Week" means calendar week.

(a) Except as provided in paragraph (b) of this section, the Board considers the term "week", as used in this part and section 401(d)(5), to mean a 7-day period that begins on a Sunday and ends on the following Saturday.

(b) For the determination of 26-week periods or seasons that end before January 20, 1979, or the computation of inactive service within those intervals, the Board considers the term "week" to mean any 7-day period.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,  
Secretary.

(FR Doc. 78-36063 Filed 12-26-78; 8:45 am)

[1505-01-M]

#### DEPARTMENT OF THE TREASURY

##### Customs Service

[19 CFR Parts 10, 11, 127, 132, 141, 142, 143, 144, 158, 159, and 173]

#### ENTRY OF MERCHANDISE AND LIQUIDATION OF ENTRIES

##### Proposed Rule

##### Correction

In FR Doc. 78-33391 appearing at page 55774 in the issue for Wednesday, November 29, 1978, make the following corrections:

(1) On page 55774, in the middle column, in the "SUMMARY" paragraph, in the second line, "Simplifica-" should read "Simplifica-".

(2) Also in the first paragraph of the summary, in the seventh line, the word "entires" should read "entries".

(3) In the seventh paragraph of the summary, in the third line, the word "reliquidation" should read "reliquidating".

(4) On page 55776, in the middle column, in paragraph 5, in the sixth line, the word "release" should read "released".

(5) On page 55778, in the middle column, in the second complete paragraph, the reference to "Section 141.63(a)" should read "Section 141.63(b)".

(6) On page 55778, in the third column, in paragraph 9, in the second line, the word "notice" should read "invoice".

(7) On page 55779, in the first column, in paragraph 12, in the third line, the word "required" should read "required".



(8) On page 55780, in the third column, in the last paragraph, in the second and third lines, the word "limitation" should read "liquidation".

(9) On page 55781, in the third column, in § 10.1(g), in the seventh line, the word "perator" should read "operator".

(10) On page 55784, in the third column, in paragraph § 132.14(b), in the fourth line, the word "priorities" should read "priority".

(11) Also on page 55784, in the third column, in § 141.0a(a), in the second line, the reference to "§ 142.2" should read "§ 142.3".

(12) On page 55788, in § 141.61 (f)(1)(iv), in the third column, make the following corrections:

(a) In the first line, the word "computations" should read "computation".

(b) In the third line, the word "value" should read "values".

(c) In the sixth line, the word "or" should read "or".

(d) In the last line of the paragraph, the customs forms should be numbered "7505, 7506, 7519 and 7521".

(13) On page 55787, in the first column, in § 141.62(b)(2)(ii), in the eleventh line, the word "which" should read "with".

(14) Also in § 141.62(b)(2)(ii), in the fifteenth line, the word "of" should read "or".

(15) On page 55787, in the middle column, in § 141.68(a)(2), in the fifth line, the word "without" should read "within".

(16) On page 55790, in the first column, in the last paragraph, in the third line, "section 464" should read "section 484".

(17) Also on page 55790, in the first column, in the last paragraph, in the fourth line, "19 U.S.C. 1464" should read "19 U.S.C. 1484".

(18) On page 55790, in the middle column, the footnote at the bottom of the column should be moved up above the heading for § 142.6.

(19) On page 55790, in the third column, in the first and second lines, "§ 142.7 invoice requirements" is a section heading and should appear as follows:

#### § 142.7 Invoice requirements.

(20) On page 55790, in the third column, in § 142.7(a)(4), the word "tariff" should begin with a capital "T".

(21) Also in § 142.7, in paragraph (b), in the eighth line, "§§ 141.66" should read "§§ 141.86".

(22) On page 55791, in the first column, in § 142.12(a)(1), in the third line, the comma (,) after the word "summary" should be deleted.

(23) On page 55791, in the third column, in § 142.16(a), in the eleventh line, the word "Merchandise" should begin with a lower case "m".

(24) Also in § 142.16(a), in the sixteenth line, the reference to "§ 142.15" should read "142.13".

(25) On page 55790, in the third column, in the rider which follows § 142.21(b)(2), in the third paragraph, in the seventh line, after the blank insert "...".

(26) In the same rider, in the third paragraph, in the tenth line, the reference to "§ 138.11(b)" should read "§ 158.11(b)".

(27) On page 55793, in the first column, in § 142.21(b)(3), in the fifth line, after the word "necessary" insert "...".

(28) On page 55793, in the middle column, in § 142.24(a), in the fifth line, "5461" should read "3461".

(29) Also on page 55793, in the third column, in § 142.28(a), in the seventh line, "141.115" should read "141.113".

(30) On page 55794, in § 142.28(a)(1), in the fourth line, "142.25" should read "142.23".

(31) On page 55794, in the middle column, in § 144.11(c), in the second line, "designate" should be spelled "designate".

(32) Also on page 55794, in the third column, in § 144.13(a), in the ninth line, "Customs Form 755" should be "Customs Form 7555".

(33) On page 55795, in the first column, in § 144.36(d)(7), in the second line, "§ 141.61(d)" should read "141.61(e)".

(34) On page 55795, in the first column, under Part 158, in amendatory paragraph 1, in the second line, "§ 158.12a" should read "158.21a".

(35) Also on page 55795, in the first column, the section heading "§ 158.12a Time Period" should be numbered "158.21a".

[4110-07-M]

### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Reg. No. 4]

### FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

International Totalization Agreements

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations implement a provision of the "Social Security Amendments of 1977". This provision authorizes the President to enter into bilateral agreements with other countries to provide for coordination between the social security systems of the United States (U.S.) and

of other countries. The bilateral agreements are generally known as totalization agreements. The purposes of a totalization agreement are (1) to permit each country to establish entitlement to and the amount of old-age, survivors, disability, or derivative benefits by combining a person's periods of coverage under the social security systems of both countries, and (2) to preclude dual coverage and dual social security taxation for work covered under both systems.

DATES: Comments must be received on or before February 26, 1979.

ADDRESSES: Before final adoption of the proposed rule, consideration will be given to any comments submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue, S.W., Washington, D.C. 20201.

### FOR FURTHER INFORMATION CONTACT:

John W. Modler, Legal Assistant, Office of Policy and Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7337.

### SUPPLEMENTARY INFORMATION:

#### A. BACKGROUND

Before the enactment of the Social Security Amendments of 1977 (Pub. L. 95-216), there was no authority in the Social Security Act (the Act) for entering into agreements with other countries to provide for coordination between the social security systems of the U.S. and of other countries. As a result, there was no way to address two serious problems.

First, many U.S. citizens employed by U.S. employers in foreign countries must pay the social security taxes in both the U.S. and the foreign countries. Also, U.S. citizens may get little if any return for the taxes they and their employers pay to the foreign system, especially where social security eligibility requirements are stricter under foreign systems, and most of them do not work long enough under the foreign system to meet these requirements.

Second, many U.S. citizens who divide their careers between work covered under the U.S. social security system and work covered under a foreign social security system lose continuity in their social security cover-

age. Some who work in foreign countries for a number of years and have separate (as opposed to overlapping) periods of coverage under two or more social security systems may not qualify for benefits under any system when they retire, become disabled, or die. For example, U.S. citizens who work in foreign countries for a number of years may not be eligible for U.S. social security disability insurance because this generally requires substantial recent work covered by the U.S. system (see § 404.116). Others may qualify for social security benefits but their benefits may not be in proportion to the work they have performed because all of their periods of coverage inside and outside the U.S. may not be considered in determining these benefits.

Congress included section 317 in Pub. L. 95-216, which allows for combining work under two systems and eliminating dual coverage and dual taxation, to help solve these problems.

### B. PROPOSED REGULATIONS

The proposed regulations provide definitions and principles for the negotiation and administration of totalization agreements. These principles cover (1) general provisions, (2) benefits, (3) coverage, (4) computations, (5) applications, (6) evidence, (7) appeals, (8) effect of the alien non-payment provision, (9) overpayments, and (10) disclosure of information.

While these definitions and principles are intended to ensure consistent and equitable treatment of all individuals affected by the agreements, they will necessarily apply to foreign social security systems with diverse characteristics. We will, where necessary to accomplish the purposes of totalization, apply these definitions and principles, as appropriate and within the limits of the law, to accommodate the diverse characteristics of these systems.

### 1. GENERAL PROVISIONS

An agreement shall be negotiated with the National government of the foreign country for the entire country. However, agreements can only be negotiated with foreign countries that have a social security system of general application in effect. We will consider a system in effect if it is collecting social security taxes or paying social security benefits.

An agreement may provide that the provisions of the social security system of each country will apply equally to the nationals of both countries (regardless of where they reside). For this purpose, refugees, stateless persons, and other nonnationals who derive benefit rights from nationals, refugees, or stateless persons may be

treated as nationals if they reside within one of the countries.

An agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of a period of 90 days in any one Congress (following the date on which the agreement is transmitted to Congress by the President) on each of which both Houses of Congress have been in session. The agreement shall become effective unless one of the Houses of Congress adopts a resolution of disapproval within the 90-session-day period.

Each agreement shall contain provisions for its possible termination. If an agreement is terminated, entitlement to benefits and coverage acquired by an individual before termination shall be retained. The provisions shall provide for notification of termination and the effective date of termination.

Provisions on amendments of totalization agreements are not included in this NPRM. If we find that regulations are necessary, we will publish them at a later date.

### 2. BENEFITS

As a result of a totalization agreement, a person who has at least 6 quarters of coverage (QC's) (see § 404.103 and 404.103a) under the U.S. system may have foreign periods of coverage combined with U.S. coverage to determine entitlement to and the benefit amount payable under the U.S. system. No credit will be given, however, for foreign periods of coverage acquired before January 1, 1937. Also, foreign earnings will be added to any covered U.S. earnings only to the extent that the combined earnings do not exceed the maximum annual earnings limitation under U.S. law (see § 404.102b).

Generally, a person will be credited with a QC for every 3 months (or equivalent period) of coverage certified by the foreign system. QC's based on foreign periods of coverage may be credited only to calendar quarters not already QC's under the U.S. system. Furthermore, foreign earnings may be assigned to a calendar quarter only if that quarter is a QC based on foreign coverage. A person may fail to meet the requirements for a currently insured status or the insured status needed to establish a period of disability solely because of the assignment of QC's based on foreign coverage to calendar quarters on a chronological basis. If this occurs, the QC's based on foreign coverage may be assigned to different calendar quarters (not already QC's under the U.S. system) within the beginning and ending date of the period reported by the foreign country.

An agreement will not provide for combining periods of coverage under

more than two social security systems. A person, however, may qualify for benefits under more than one agreement. If this occurs, the person shall receive benefits only under the agreement affording the most favorable treatment. In the absence of evidence to the contrary, the agreement that provides the higher benefit shall be considered as affording the most favorable treatment.

A person may not become entitled to hospital insurance benefits under section 226 of the Social Security Act by combining periods of coverage under the U.S. system with those under the foreign system. Entitlement to hospital insurance benefits is not precluded if the person otherwise meets the requirements.

### 3. COVERAGE

An agreement shall contain provisions precluding dual coverage. Employment or self-employment (or service recognized as equivalent under the U.S. system or the foreign system) shall, on or after the effective date of the agreement, result in a period of coverage under either the U.S. or foreign system, but not under both. Methods shall be described in the agreement for determining under which system the service shall result in a period of coverage.

Although an agreement may modify coverage provisions of title II of the Act, it should do so by exemptions from coverage rather than by extensions of coverage under title II. Generally, a worker will be covered by the country in which he or she is working. However, an agreement may provide exceptions to this principle so that a worker will be covered by the country to which he or she has the greater attachment. Examples illustrating this principle are provided in proposed §§ 404.1913(b)(2) and 404.1913(b)(3).

Agreements may provide for variations from the general principles for precluding dual coverage to avoid inequitable or anomalous coverage situations for certain workers. However, if a person performs services that are not now covered by the U.S., an agreement should refrain from creating coverage for those services.

An agreement will contain provisions precluding dual payment of contributions or taxes. On or after the effective date of an agreement, any employment or self-employment (or service recognized as equivalent under the U.S. social security system or the foreign system) which is covered under the agreement shall be subject to taxes or contributions under the U.S. system or the foreign system, but not under both (see section 317(b) or Pub. L. 95-216).



## 4. COMPUTATIONS

An agreement shall contain a provision regarding the method of computing the benefits payable under the U.S. system if entitlement is established based on combined periods of coverage under the U.S. system and under the foreign system. The benefit payable under the U.S. system shall be based on the proportion of the person's periods of coverage completed under the U.S. system.

To determine the benefit payable under an agreement, a "theoretical" primary insurance amount (PIA) (see § 404.203(a) for the definition of the PIA) shall be computed like other title II PIA's, but by combining the person's covered earnings under both the U.S. and the foreign systems. The theoretical PIA shall then be reduced in proportion to the periods of coverage actually completed under the U.S. system. The amount derived shall be called the pro rata PIA. An example illustrating this provision is provided in the proposed § 404.1918(a).

Auxiliary and survivors benefit amounts shall be determined on the basis of the pro rata PIA. The regular reductions for age under section 202(q) of the Act shall apply to the pro rata benefits of the wage earner and to any auxiliaries or survivors. Benefits shall be payable subject to the family maximum (see § 404.403) derived from the pro rata PIA. If the pro rata PIA is less than the minimum PIA, the family maximum shall be 1½ times the pro rata PIA.

The pro rata PIA shall be recomputed only if the inclusion of the additional earnings will result in an increase in both the theoretical PIA and the benefits payable by the U.S. to all beneficiaries, unless otherwise provided by the agreement. Subject to these limitations, the pro rata PIA shall be automatically recomputed, as provided in § 404.244, to include additional earnings under the U.S. system. An application, however, must be filed to have the pro rata PIA recomputed to include additional foreign earnings.

A U.S. resident may receive benefits under an agreement from both the U.S. and from the foreign country. The total amount of the resident's two benefits, however, may be less than the amount for which the resident would qualify under the U.S. system based on the minimum PIA. A totalization agreement may provide that the U.S. supplement the total amount to raise it to the amount for which the resident would have qualified under the U.S. system based on the minimum PIA.

## 5. APPLICATIONS

We will consider an application filed with the foreign system to be filed with the Social Security Administra-

tion (SSA) as of the date it is filed with the foreign system, if an applicant expresses or implies an intent to claim benefits from the U.S. under an agreement. Generally the same rules for applications filed with SSA will apply. Benefits shall not be payable on the basis of an application filed before the effective date of the agreement.

## 6. EVIDENCE

SSA may consider evidence submitted to the social security system of the foreign country as evidence submitted to SSA. SSA shall use the rules in §§ 404.708 and 404.709, which were published as a final rule in the FEDERAL REGISTER on June 7, 1978 (43 FR 24794), to determine if the evidence submitted is sufficient or if additional evidence is needed to prove initial or continuing entitlement to benefits.

If an application is filed for disability insurance benefits, SSA shall consider medical evidence, if any, submitted to the foreign system as if it were submitted to the U.S. system. We will use the rules in Subpart P of Regulations No. 4, for making a disability determination.

## 7. APPEALS

SSA will consider a request for consideration, hearing, or Appeal Council review of a determination made by SSA that is filed with the foreign system within the 60-day time period applicable to SSA determinations to be timely filed with SSA. We will apply the provisions in Subpart J of Regulations No. 4 in adjudicating the request.

## 8. EFFECT OF THE ALIEN NON-PAYMENT PROVISION

An agreement may provide that a person entitled to benefits under the U.S. system may receive those benefits while residing in the foreign country party to an agreement, regardless of the alien non-payment provision (see § 404.460).

## 9. OVERPAYMENTS

Section 204 of the Act, § 404.502 of the regulations, provides for adjusting payments if a person has received more than the correct payment under title II. Payments made by a foreign country, however, are not considered payments under title II. Therefore, title II benefits may not be adjusted under section 204 of the Act to recover an overpayment made by the foreign system of a country party to a totalization agreement. Section 233 of the Act provides that an "agreement may contain other provisions which are not inconsistent with other provisions of this title . . ." If an agreement authorized the adjustment of title II benefits to recover an overpayment

made by the foreign country, the provisions would be "inconsistent with" sections 205(i) and 207 of the Act. Therefore, a totalization agreement may not authorize the adjustment of title II benefits to recover an overpayment made by the foreign system. Proposed § 404.1929 reflects these adjustment prohibitions.

## 10. DISCLOSURE OF INFORMATION

The use of information furnished under an agreement generally shall be governed by the national statutes on confidentiality and disclosure of information of the country that has been furnished the information. In negotiating an agreement, consideration should be given to the compatibility of the other country's laws on confidentiality and disclosure with those of the U.S. To the extent possible, information exchanged between the U.S. and the other country should be exclusively for purposes of implementing the agreement.

The U.S. signed totalization agreements with Italy in 1973 and with the Federal Republic of Germany in 1976. The Italian agreement has already been through the Congressional review process and is expected to become effective on November 1, 1978. The President sent the agreement with the Federal Republic of Germany to Congress on September 21, 1978. The agreements entered into with Italy and the Federal Republic of Germany are consistent with these proposed regulations. As agreements become effective, they will be published as notices in the FEDERAL REGISTER.

The proposed rule is to be issued under the authority of sections 205, 233, and 1102 of the Social Security Act; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; 42 U.S.C. 405, 433, and 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security—Disability Insurance and 13.803-4, Social Security Retirement and Survivors Insurance)

Dated: October 2, 1978.

DON WORTMAN,  
Acting Commissioner of  
Social Security.

Approved: December 11, 1978.

JOSEPH A. CALIFANO, JR.,  
Secretary of Health,  
Education, and Welfare.

Part 404 of chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Subpart T is added to read as follows:

## Subpart T—Totalization Agreements

## GENERAL PROVISIONS

Sec.  
404.1901 Introduction.  
404.1902 Definitions.

Sec.  
404.1903 Negotiating totalization agreements.  
404.1904 Effective date of a totalization agreement.  
404.1905 Termination of agreements.

## BENEFIT PROVISIONS

404.1906 Crediting foreign periods of coverage.  
404.1910 Person qualifies under more than one totalization agreement.  
404.1911 Effects of a totalization agreement on entitlement to hospital insurance benefits.

## COVERAGE PROVISIONS

404.1913 Precluding dual coverage.  
404.1914 Certificate of coverage.  
404.1915 Payment of contributions.

## COMPUTATION PROVISIONS

404.1918 How benefits are computed.  
404.1919 How benefits are recomputed.  
404.1920 Supplementing the U.S. benefit if the total amount of the combined benefits is less than the U.S. minimum benefit.  
404.1921 Benefits of less than \$1 due.

## OTHER PROVISIONS

404.1925 Applications.  
404.1926 Evidence.  
404.1927 Appeals.  
404.1928 Effect of the alien non-payment provision.  
404.1929 Overpayments.  
404.1930 Disclosure of information.

AUTHORITY: Sec. 205, 233, and 1102; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; (42 U.S.C. 405, 433, 1302)

## Subpart T—Totalization Agreements

## GENERAL PROVISIONS

## § 404.1901 Introduction.

Under section 233 of the Social Security Act, the President may enter into an agreement establishing a totalization arrangement between the social security system of the U.S. and the social security system of a foreign country. An agreement permits entitlement to and the amount of old-age, survivors, disability, or derivative benefits to be based on a combination of a person's periods of coverage under the social security system of the U.S. and the social security system of the foreign country. An agreement also provides for the precluding of dual coverage and dual social security taxation for work covered under both systems. An agreement may provide that the provisions of the social security system of each country will apply equally to the nationals of both countries (regardless of where they reside). For this purpose, refugees, stateless persons, and other nonnationals who derive benefit rights from nationals, refugees, or stateless persons may be treated as nationals if they reside within one of the countries. The following sections provide definitions and

principles for the negotiation and administration of totalization agreements. Where necessary to accomplish the purposes of totalization, we will apply these definitions and principles, as appropriate and within the limits of the law, to accommodate the widely diverse characteristics of foreign social security systems.

## § 404.1902 Definitions.

For purposes of this subpart—

"Act" means the Social Security Act (42 U.S.C. 401 et. seq.).

"Agency" means the agency responsible for the specific administration of a social security system including responsibility for implementing an agreement; the Social Security Administration (SSA) is the "agency" in the U.S.

"Agreement" means the agreement negotiated to provide coordination between the social security systems of the countries party to the agreement. The term agreement includes any administrative agreements concluded for purposes of administering the agreement.

"Competent authority" means the official with overall responsibility for administration of a country's social security system including applicable laws and international social security agreements; the Secretary of HEW is the "competent authority" in the U.S.

"Period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent under the social security system of the U.S. or under the social security system of the foreign country which is a party to an agreement.

"Residence" or "ordinarily resides," when used in agreements, has the following meaning for the U.S. "Residence" or "ordinarily resides" in a country means that a person has established a home in that country intending to remain there permanently or for an indefinite period of time. Generally, a person will be considered to have established a home in a country if that person assumes certain economic burdens, such as the purchase of a dwelling or establishment of a business, and participates in the social and cultural activities of the community. If residence in a country is established, it may continue even though the person is temporarily absent from that country. Generally, an absence of six months or less will be considered temporary. If an absence is for more than six months, residence in the country will generally be considered to continue only if there is sufficient evidence to establish that the person intends to maintain the residence. Sufficient evidence would include the main-

tenance of a home or apartment in that country, the departure from the country with a reentry permit, or similar acts. The existence of business or family associations sufficient to warrant the person's return would also be considered.

"Social security system" means a social insurance or pension system which is of general application and which provides for paying periodic benefits, or the actuarial equivalent, because of old-age, death, or disability.

## § 404.1903 Negotiating totalization agreements.

An agreement shall be negotiated with the National government of the foreign country for the entire country. However, agreements may only be negotiated with foreign countries that have a social security system of general application in effect. The system shall be considered to be in effect if it is collecting social security taxes or paying social security benefits.

## § 404.1904 Effective date of a totalization agreement.

A totalization agreement shall become effective on any date provided in the agreement if—

(a) The date occurs after the expiration of 90 days in any one Congress on each of which both Houses of Congress have been in session following the date on which the agreement is transmitted to Congress by the President; and

(b) Neither House of Congress adopts a resolution of disapproval of the agreement within the 90-day period described in paragraph (a) of this section.

## § 404.1905 Termination of agreements.

Each agreement shall contain provisions for its possible termination. If an agreement is terminated, entitlement to benefits and coverage acquired by an individual before termination shall be retained. The provisions shall provide for notification of termination to the other party and the effective date of termination.

## BENEFIT PROVISIONS

## § 404.1906 Crediting foreign periods of coverage.

(a) General. An individual must have at least 6 quarters of coverage, as defined in section 213 of the Social Security Act, to have foreign periods of coverage combined with U.S. periods of coverage for purposes of determining entitlement to and the amount of benefits payable under title II. As a rule, SSA will accept foreign coverage information, as certified by the foreign country's agency, unless otherwise specified by the agreement. No credit will be given, however, for peri-



ods of coverage acquired before January 1, 1937. Also, foreign earnings will be added to any covered U.S. earnings, subject to the maximum yearly limitation in U.S. law (see § 404.1027).

(b) For quarters of coverage purposes. (1) Generally, a quarter of coverage (QC) will be credited for every 3 months (or equivalent period) of coverage certified to SSA by the other country's agency. QC's based on foreign periods of coverage may be credited as QC's only to calendar quarters not already QC's under title II. Earnings under the foreign system may be assigned only to those calendar quarters where a QC has been credited based on foreign coverage.

(2) If an individual fails to meet the requirements for currently insured status or the insured status needed for establishing a period of disability solely because of the assignment of QC's based on foreign coverage to calendar quarters chronologically, the QC's based on foreign coverage may be assigned to different calendar quarters within the beginning and ending date of the period reported by the foreign country, but only as permitted under paragraph (b)(1) of this section.

#### § 404.1910 Person qualifies under more than one totalization agreement.

(a) An agreement may not provide for combining periods of coverage under more than two social security systems.

(b) If a person qualifies under more than one agreement, the person will receive benefits from the U.S. only under the agreement affording the most favorable treatment.

(c) In the absence of evidence to the contrary, the agreement that provides the higher benefit will be considered as affording the most favorable treatment for purposes of paragraph (b) of this section.

#### § 404.1911 Effects of a totalization agreement on entitlement to hospital insurance benefits.

A person may not become entitled to hospital insurance benefits under section 226 of the Act by combining the person's periods of coverage under the social security system of the U.S. with the person's periods of coverage under the social security system of the foreign country. Entitlement to hospital insurance benefits is not precluded if the person otherwise meets the requirements.

#### COVERAGE PROVISIONS

##### § 404.1913 Precluding dual coverage.

(a) General. Employment or self-employment or services recognized as equivalent under the Act or the social security system of the foreign country shall, on or after the effective date of

the agreement, result in a period of coverage under the U.S. system or under the foreign system, but not under both. Methods shall be set forth in the agreement for determining under which system the employment, self-employment, or other service shall result in a period of coverage.

(b) Principals for precluding dual coverage. (1) Although an agreement may modify coverage provisions of title II of the Act, it should do so by exemptions from coverage rather than by extensions of coverage under title II of the Act. Generally, a worker will be covered by the country in which he or she is working. However, an agreement may provide exceptions to this principle so that a worker will be covered by the country to which he or she has the greater attachment.

(2) If the work would otherwise be covered by both countries, an agreement will exempt the worker from coverage by one of the countries.

EXAMPLE: A U.S. citizen working temporarily in the branch office of a U.S. employer in XYZ country will remain covered by the U.S. and exempt from coverage by XYZ country.

(3) If the work would otherwise be covered only by the U.S. but the worker has the greater attachment to the economy of the foreign country, an agreement may exempt the worker from U.S. coverage and provide for coverage by the foreign country.

EXAMPLE: A national of XYZ country sent by his employer in XYZ country to work for that employer in the U.S. will, after the effective date of the agreement, be covered by XYZ country and exempt from coverage by the U.S.

(4) Agreements may provide for variations from the general principles for precluding dual coverage to avoid inequitable or anomalous coverage situations for certain workers. However, if a worker performs services that are not now covered under the U.S. system, an agreement should refrain from creating coverage for those services.

##### § 404.1914 Certificate of coverage.

Under some agreements, proof of coverage under one social security system may be required before the individual may be exempt from coverage under the other system. Requests for certificate of coverage under the U.S. system may be submitted by the employer, employee, or self-employed individual to SSA.

##### § 404.1915 Payment of contributions.

On or after the effective date of the agreement, to the extent that employment or self-employment (or service recognized as equivalent) under the U.S. social security system or foreign system is covered under the agreement, the agreement shall provide

that the work or equivalent service be subject to payment of contributions or taxes under only one system (see sections 1401(d), 3101(c), and 3111(c) of the Internal Revenue Code of 1954).

#### COMPUTATION PROVISIONS

##### § 404.1918 How benefits are computed.

(a) To determine the benefit payable under an agreement, a theoretical primary insurance amount (see § 404.203(a) for the definition of the PIA) shall be computed like other title II PIA's, but by combining the person's covered earnings under both the U.S. and the foreign systems. The theoretical PIA shall then be reduced in proportion to the periods of coverage actually completed under the U.S. system. The amount derived shall be called the pro rata PIA.

EXAMPLE: A person needs 25 QC's to be insured, but has only 5 years of work (20 QC's), under the U.S. system. The person, however, has 10 years of work (40 QC's) under the social security system of a foreign country that is a party to a totalization agreement. The combined coverage gives the person insured status. The theoretical PIA is computed on the basis of combined earnings under both the U.S. and foreign systems. This amount is then reduced in proportion to the coverage earned under the U.S. system. If the theoretical PIA is \$270, the computation shall be as follows:

\$270 (Theoretical PIA) × 20 (U.S. QC's)/60 (20 U.S. + 40 Foreign QC's) = \$90 (Pro rata PIA)

(b) If the pro rata PIA, as described in paragraph (a) of this section, does not correspond to a PIA provided by section 215(a) of the Act, it shall be rounded to the nearest PIA provided by that section. If the pro rata PIA is less than the minimum PIA provided by section 215(a), it shall be rounded to the next higher multiple of \$.10, if it is not a multiple of \$.10 (see section 215(g) of the Act).

(c) Auxiliary and survivors benefit amounts (see Subpart D) shall be determined on the basis of the pro rata PIA. The regular reductions for age under section 202(q) of the Act shall apply to the pro rata benefits of the wage earner and to any auxiliaries or survivors. Benefits shall be payable subject to the family maximum (see § 404.403) derived from the pro rata PIA. If the pro rata PIA is less than the minimum PIA, the family maximum shall be 1½ times the pro rata PIA.

##### § 404.1919 How benefits are recomputed.

The pro rata PIA shall be recomputed only if the inclusion of the additional earnings results in an increase in both the theoretical PIA and the benefits payable by the U.S. to all beneficiaries, unless otherwise provided by the agreement. Subject to

these limitations, the pro rata PIA will be automatically recomputed (see § 404.244) to include additional earnings under the U.S. system. An application, however, must be filed to have the pro rata PIA recomputed to include additional earnings under the foreign system.

##### § 404.1920 Supplementing the U.S. benefit if the total amount of the combined benefits is less than the U.S. minimum benefit.

If a resident of the U.S. receives benefits under an agreement from both the U.S. and from the foreign country, the total amount of the two benefits may be less than the amount for which the resident would qualify under the U.S. system based on the minimum PIA. An agreement may provide that the U.S. shall supplement the total amount to raise it to the amount for which the resident would have qualified under the U.S. system based on the minimum PIA. (The minimum benefit shall be based on the first figure in column IV in the table in section 215(a) of the Act for a person becoming eligible for the benefit before January 1, 1979, or the primary insurance amount determined under section 215(a)(1)(C)(i)(I) of the Act for a person becoming eligible for the benefit after December 31, 1978.)

##### § 404.1921 Benefits of less than \$1 due.

If the monthly benefit amount due an individual (or several individuals, e.g., children, where several benefits are combined in one check) as a result of a claim filed under an agreement is less than \$1, the benefits may be accumulated until they equal or exceed \$5.

#### OTHER PROVISIONS

##### § 404.1925 Applications.

(a) An application filed with the competent authority or agency of a country with which the U.S. has concluded an agreement shall be considered an application for benefits under title II of the Act, if an applicant expresses or implies an intent to claim benefits from the U.S. under an agreement.

(b) An application or a written statement requesting benefits submitted to the competent authority or agency of a country, described in paragraph (a) of this section, shall be considered to have been filed with SSA as of the date it is filed with the competent authority or agency.

(c) Benefits under an agreement may not be paid on the basis of an application filed before the effective date of the agreement.

(d) If an application, as described in this section constitutes an application

for title II benefits, it shall be subject to the same rules that apply to applications filed with SSA (see Subpart G of this part).

##### § 404.1926 Evidence.

(a) An applicant for benefits under an agreement shall submit the evidence needed to establish entitlement, as provided in Subpart H of this part. Special evidence requirements for disability benefits are in Subpart P of this part.

(b) Evidence submitted to the competent authority or agency of a country with which the U.S. has concluded an agreement may be considered as evidence submitted to SSA. SSA shall use the rules in §§ 404.708 and 404.709 to determine if the evidence submitted is sufficient, or if additional evidence is needed to prove initial or continuing entitlement to benefits.

(c) If an application is filed for disability benefits, SSA shall consider medical evidence submitted to a competent authority or agency, as described in paragraph (b) of this section, and use the rules of Subpart P of this part for making a disability determination.

##### § 404.1927 Appeals.

(a) A request for reconsideration, hearing, or Appeals Council review of a determination that is filed with the competent authority or agency of a country with which the U.S. has concluded an agreement, shall be considered to have been timely filed with SSA if it is filed within the 60-day time period provided in §§ 404.911, 404.918, and 404.946.

(b) A request for reconsideration, hearing, or Appeals Council review of a determination made by SSA resulting from a claim filed under an agreement shall be subject to the provisions in Subpart J of this part. The rules governing administrative finality in Subpart J of this part shall also apply.

##### § 404.1928 Effect of the alien non-payment provision.

An agreement may provide that a person entitled to benefits under title II of the Social Security Act may receive those benefits while residing in the foreign country party to the agreement, regardless of the alien non-payment provision (see § 404.460).

##### § 404.1929 Overpayments.

An agreement may not authorize the adjustment of title II benefits to recover an overpayment made under the social security system of a foreign country (see § 404.501). Where an overpayment is made under the U.S. system, the provision in Subpart F of this part will apply.

##### § 404.1930 Disclosure of information.

The use of information furnished under an agreement generally shall be governed by the national statutes on confidentiality and disclosure of information of the country that has been furnished the information. (The U.S. will be governed by pertinent provisions of the Social Security Act, the Freedom of Information Act, the Privacy Act, the Tax Reform Act, and other related statutes.) In negotiating an agreement, consideration should be given to the compatibility of the other country's laws on confidentiality and disclosure to those of the U.S. To the extent possible, information exchanged between the U.S. and the foreign country should be exclusively for purposes of implementing the agreement.

2. Section 404.302 is revised to read as follows:

##### § 404.302 Amount of benefit payments.

Ordinarily, a beneficiary is paid the monthly benefit or lump sum to which he or she is entitled in the amount indicated in the succeeding sections of this subpart. However, in some instances a beneficiary may be paid more or less than that amount because of the provisions of Subparts E or F of this part. See those subparts for full explanation of the circumstances under which these changes occur. See Subpart E of this part also for conditions under which benefits will not be paid where the person on whose earnings record benefits are claimed or based is deported, or where a claimant or beneficiary is an alien residing outside the United States or has been convicted of certain offenses. Also see § 404.377 of this subpart for reduction of special payments to persons at age 72 because of eligibility for governmental pension system benefits. In addition see § 404.1918 when a proportionate payment is made to a person under a totalization agreement.

##### § 404.460 [Amended]

3. In § 404.460, the cross-reference in paragraph (a) immediately preceding paragraph (a)(1) is changed from "(See § 404.380 regarding special payments at age 72.)" to "(See § 404.380 regarding special payments at age 72 and § 404.1928 regarding payments under a totalization agreement.)"

(FR Doc. 78-35987 Filed 12-26-78; 8:45 am)



[4910-22-M]

## DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Part 650]

[FHWA Docket No. 78-9]

## LOCATION AND HYDRAULIC DESIGN OF ENCROACHMENTS ON FLOOD PLAINS

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document is issued to solicit comments on suggested revisions to an existing regulation, Hydraulic Design of Highway Encroachments on Flood Plains. The revisions set forth criteria for flood-plain management within programs administered by the Federal Highway Administration (FHWA) as established by Executive Order 11988 of May 24, 1977.

**DATE:** Comments must be received on or before February 26, 1979.

**ADDRESS:** Written comments should be sent (preferably in triplicate) to: FHWA Docket No. 78-9, Federal Highway Administration, Room 4205, (HCC-10), 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Frank L. Johnson or Mr. Philip L. Thompson, 202-472-7690, Office of Engineering; Mr. Lee J. Burstyn, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** This rulemaking process solicits comments on the implementation of procedures for the location and hydraulic design of highway encroachments on flood plains. This rulemaking is proposed to amend an existing regulation to include provisions required by Executive Order 11988-Floodplain Management which are not addressed in other Federal Highway Administration (FHWA) regulations. The existing regulation (23 CFR 650, Subpart A) was originally published at 39 FR 36331 on October 9, 1974. This proposed revision would codify the policies and procedures contained in Volume 6, Chapter 7, Section 3, Subsection 2, of the Federal-Aid Highway Program Manual.\* Pursuant to Execu-

\* This document is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

tive Order 11988, the Department of Transportation published at 43 FR 27148 on June 22, 1978, its proposed policies and procedures on protection and management of flood plains. This rulemaking is consistent with the aforementioned Department of Transportation's directive.

Since provisions of this proposed regulation will be implemented by highway agencies which receive Federal-aid highway funds, the provisions are in the form of general policy and requirements. Specific procedures to satisfy this regulation will be established by highway agencies within the framework of their environmental action plans (23 CFR 795, Process Guidelines for the Development of Environmental Action Plans) and design policy. Review for compliance with this regulation will be accomplished by FHWA Division Offices located in each State.

In preparing this proposed regulation, the FHWA consulted with the U.S. Water Resources Council (WRC), the U.S. Council on Environmental Quality, and the Federal Insurance Administration.

Advisory material in the Water Resources Council Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030) was considered in drafting this regulation. The decisionmaking process set forth in the Guidelines, as an explanation of the Executive Order's provisions, is dissimilar to procedures applicable to programs administered by the FHWA. The Guidelines assume that the decisionmaking process involves a single large flood plain and a proposed action at a location on that large flood plain. With this premise, the following WRC decisionmaking process steps appear workable: (1) determine if proposed action is in the base flood plain, (2) provided early public review, (3) identify and evaluate alternatives to locating in the base flood plain, (4) identify impacts of proposed action, (5) minimize impacts, restore and preserve flood plain values, (6) reevaluate alternatives, and (7) make findings and provide public explanation.

This WRC decisionmaking process is inappropriate for general application in determining highway design and location. Highway actions are processed and reviewed as sections or projects between logical termini and, as such, traverse numerous flood plains of various size and relevance. Since flood plains can only be entirely avoided for those rare projects located on a watershed boundary, the "no-build" alternative is the only alternative to an encroachment of even minimal impact. If a specific flood plain or series of flood plains are avoided, encroachment at other locations or other flood plains by necessity become involved. There-

fore, giving consideration to avoidance of all base flood plains with a highway actions is not feasible. Except for locations on a watershed boundary and the "no-build" solution, alternative locations under consideration will involve flood plains.

For proposed highway actions on flood plains the decision process involves comparing various highway alternatives and their related impacts, choosing an alternative, minimizing the impacts of the chosen alternative, and restoring and preserving the impacted flood-plain values. This process includes the alternative of avoiding any action by withdrawing the proposed project. The decision generally is not whether the highway should be located in or out of the base flood plain, but rather which series of flood plains to impact if the "no-build" alternative is not a viable alternative. To support the resulting decision the proposed regulation requires that all base flood plains and the impacts to them be identified for all alternatives. If this identification reveals that an "action on the base flood plain" (encroachment) will cause unusually adverse impacts, the action will be termed a "significant encroachment" and require special attention. This includes making an only practicable alternative finding by FHWA of why these unusual impacts cannot be avoided and what alternatives were considered.

A significant encroachment, as defined in this proposed regulation, contemplates construction or flood related impact which may include substantial likely future damage, disruption of an emergency or evacuation route, high probability of loss of human life, or notable adverse impact on flood-plain values. The application of this definition in highway design and location will avoid the significant adverse effects due to occupancy and alteration of flood plains as contemplated by the Executive Order. It will allow for the thorough consideration of all relevant highway actions in accordance with the procedures outlined in this proposed regulation.

This notice of proposed rulemaking is issued under the authority of 23 U.S.C. §§ 109(a), 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

**NOTE:** The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on: December 12, 1978.

JOHN S. HASSELL, Jr.,  
Deputy Administrator.

In consideration of the foregoing, the Federal Highway Administration proposes to revise Part 650, Subpart A of Chapter I, Title 23, Code of Federal Regulations to read as follows:

## PART 650—BRIDGES, STRUCTURES AND HYDRAULICS

## Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

| Sec.    | Purpose.                              |
|---------|---------------------------------------|
| 650.101 | Purpose.                              |
| 650.103 | Policy.                               |
| 650.105 | Definitions.                          |
| 650.107 | Application.                          |
| 650.109 | Flood-plain identification.           |
| 650.111 | Public involvement.                   |
| 650.113 | Location hydraulic studies.           |
| 650.115 | Environmental processing.             |
| 650.117 | Only practicable alternative finding. |
| 650.119 | Design standards.                     |
| 650.121 | Design studies and documentation.     |

**AUTHORITY:** 23 U.S.C. 109(a), 315; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988—Floodplain Management, May 24, 1977, (42 FR 26951).

## Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

## § 650.101 Purpose.

To prescribe Federal Highway Administration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including Direct Federal highway projects administered by FHWA.

## § 650.103 Policy.

It is the policy of the FHWA:

- To encourage a broad and unified effort to prevent uneconomic, hazardous or incompatible use and development of the Nation's flood plains,
- To avoid highway encroachments, where practicable,
- To minimize the impacts of highway agency actions which adversely affect base flood plains,
- To restore and preserve the function of natural and beneficial flood-plain values adversely impacted by highway agency actions,
- To avoid the direct and indirect support of incompatible flood-plain development, and
- To be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where applicable, in the construction of Direct Federal highway projects, and
- To incorporate "A Unified National Program for Floodplain Management" of the Water Resources Council into FHWA procedures.

## § 650.105 Definitions.

As used in this regulation—

(a) "Action" shall mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds.

(b) "Base flood" shall mean that flood or tide having a 1-percent chance of being exceeded in any given year.

(c) "Base flood plain" shall mean that area subject to flooding by the base flood.

(d) "Design Flood" shall mean the peak discharge, volume, if appropriate, stage or wave crest elevation, of the flood associated with the recurrence interval selected for the design of a highway encroachment. Except where terrain or other factors, such as a grade separation, control the highway profile elevation, floods greater than the design flood will overtop the highway or flow over the watershed divide.

(e) "Encroachment" shall mean an action within the limits of the base flood plain.

(f) "Facility" shall mean any element of the built environment other than a walled or roofed building.

(g) "Flood of record" shall mean the largest historical flood event which has been reliably determined and recorded.

(h) "Floodproof" shall mean to design and construct individual buildings, facilities, and their sites to protect against structural failure, to keep water out or to reduce the effects of water entry.

(i) "Floodway" shall mean the flood-plain area that is reserved in an open manner by Federal, State or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount (not to exceed 1 foot as set by the National Flood Insurance Program).

(j) "Minimize" shall mean to reduce to the smallest practicable amount or degree.

(k) "Natural and beneficial flood plain values" shall include but are not limited to: fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

(l) "Practicable" shall mean capable of being done within reasonable natural, social, and economic constraints.

(m) "Preserve" shall mean to avoid modification to the natural flood-plain environment or to maintain it as closely as practicable in its natural state.

(n) "Restore" shall mean to reestablish a setting or environment in which the functions of the natural and beneficial flood-plain values adversely impacted by the highway agency action can again operate.

(o) "Risk" shall mean the economic and other consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss, hazard to life, and impact on natural and beneficial flood-plain values during the service life of the highway.

(p) "Significant encroachment" shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction or flood related impacts:

(1) Likely future damage associated with the encroachment that could be substantial in cost or extent, including potential interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.

(2) A high probability of loss of human life, or

(3) A notable adverse impact on natural and beneficial flood-plain values.

(q) "Structure" shall mean a bridge, culvert or other facility designed for the purpose of conveying flood waters. (As defined by the Water Resources Council (WRC) and the Federal Insurance Administration (FIA), a structure is a walled and roofed building.)

(r) "Support base flood-plain development" shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

## § 650.107 Application.

(a) The provisions of this regulation, except the provisions of § 650.117, shall apply to all encroachments and to all actions which affect base flood plains, except as set forth in § 650.107(d).

(b) The provisions of §§ 650.109 through 650.117 of this regulation shall be implemented in a timely manner during development of current projects. Documentation of compliance with these provisions should be incorporated into project records, where practicable. However, highway sections may be processed without formal documentation where one of the following actions have occurred:

(1) The draft environmental impact statement (EIS) has been filed with the Environmental Protection Agency (EPA) prior to or within 6 months following the date of this regulation and the final EIS for this draft EIS is filed with EPA within 1 year following the date of this regulation, or

(2) The provisions for public hearings under the State Action Plan (23 CFR 790) have been met, the FHWA has concurred in a "nonmajor action" determination or approved the nega-



tive declaration, and the FHWA (or State highway agency under the provisions of 23 CFR 640) has given approval which is equivalent to location approval within 60 days following the date of this regulation.

(c) The following actions are found to be in compliance with the provisions of this regulation and no further documentation is required of highway agencies:

(1) Resurfacing highways, correcting substandard intersections, improving railroad at-grade crossings.

(2) Lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and protective devices at railroad crossings.

(3) Pavement grooving, glare screen, and energy attenuators for safety improvement.

(4) Reconstruction of crossroad or railroad separations.

(5) Highway landscaping, and

(6) Construction of bus shelters and bays.

(d) The provisions of this regulation shall not apply to repairs made with emergency funds (23 CFR 630, Subpart E) during or immediately following a disaster.

(e) The provisions of 23 CFR 640, Certification Acceptance, cannot be applied to the requirements of this regulation.

#### § 650.109 Flood-plain identification.

Base flood-plain limits shall be established and encroachments delimited for location alternatives. FIA maps, where available, shall be used to identify flood plains.

#### § 650.111. Public involvement.

If an alternative under consideration contains an encroachment, opportunity for early public review and comment on the proposed encroachment shall be provided within the framework of procedures which have been established to meet the public involvement requirements of 23 CFR, Parts 771 and 795 or 790.

#### § 650.113. Location hydraulic studies.

(a) Alternatives to encroachments shall be investigated.

(b) Alternatives containing encroachments shall be evaluated in sufficient detail to assess the flood risk.

#### § 650.115. Environmental processing.

(a) Project records shall contain discussion of the following items, commensurate with the significance of the impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action.

(2) The impacts on natural and beneficial flood-plain values.

(3) The degree of direct and indirect support of incompatible flood-plain development.

(4) The measures to minimize impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(b) Project records shall contain discussion of § 650.117 (a)(1) through (3) in sufficient detail to permit review of the practicability of alternatives to significant encroachments.

(c) Where FIA standards and criteria are demonstrably inappropriate for a proposed Direct Federal highway action, project records shall contain discussion of the reasons therefor.

#### § 650.117 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not be approved unless the Division Administrator finds, in writing, that the proposed significant encroachment is the only practicable alternative. The proposed finding shall ordinarily be included in the final environmental document for the proposed action. The finding shall include:

(1) The reasons why the proposed action must be located in the flood plain.

(2) A list of alternative considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

(b) A copy of the finding and a location map shall be made available to appropriate State and areawide clearinghouses following procedures established in accordance with 23 CFR 420, Subpart C.

#### § 650.119. Design standards.

(a) All encroachments shall be designed with consideration of capital costs and risks to accommodate passage of the base flood and to be consistent with standards established by the FIA, State, and local governmental agencies for the administration of the National Flood Insurance Program where a floodway has been designated.

(1) Accommodation of the base flood may be through highway drainage structures, over the highway, or both.

(2) Accommodation of the base flood along a highway may include inundation of the highway.

(b) The design flood selected for each encroachment shall be supported by an analysis of design alternatives with consideration given to capital costs, risks, stream stability, budgetary constraints, the need for emergency supply and evacuation routes and the need for emergency vehicle access.

(c) The design flood for encroachments by through lanes of Interstate highways shall not be less than the flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and frontage roads or for other Federal-aid highways.

(2) The effects of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(c) Rest area buildings and waste treatment facilities shall be located outside the base flood plain or flood-proofed against damage from the base flood.

(d) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet in volume or 25-feet deep, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids.

(e) Safety grates shall not be installed on cross-drainage structures unless upstream debris control structures exist or are installed.

#### § 650.121. Design studies and documentation.

(a) The detail of studies and documentation shall be commensurate with the risk associated with the encroachment, the importance of the highway facility and the importance of the flood plain. Less comprehensive studies are appropriate for encroachments on minor streams and at locations where the risk is small.

(b) Documentation of studies by highway agencies shall contain:

(1) Hydrologic and hydraulic data and design computations, and

(2) The design flood and base flood analysis required by § 650.119(a) and (b).

(c) At each encroachment location, project plans shall show:

(1) The magnitude, probability of exceedence, and water surface elevations at appropriate locations for the design flood and the base flood, if different from the design flood, and

(2) The magnitude, water surface elevation and date of occurrence of the flood of record, if greater than the base flood.

(d) The documentation of design computations shall be retained in accordance with 23 CFR Part 17.

(FR Doc. 78-35979 Filed 12-26-78; 8:45 am)

[4210-01-M]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—  
Federal Housing Commissioner

[24 CFR Part 445]

[Docket No. R78-601]

### SECTION 312 REHABILITATION HOUSING

#### Application of Payments

AGENCY: Department of Housing and Urban Development (HUD)

ACTION: Proposed rule.

SUMMARY: This rule applies repayments on delinquent loans for Section 312 Rehabilitation Housing first to interest, and the remainder to principal. This rule is necessary because the current practice of not computing interest until the principal is paid in full results in a lower interest rate for borrowers who default than for borrowers who remain current in payment.

DATE: Comments must be received on or before January 28, 1979.

ADDRESS: Written comments should refer to the docket number and date and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410. A copy of each such communication will be available for public inspection during regular business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

John D. McNees, Acting Director, Office of Property Disposition HUD, Room 9282, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6675. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Presently, all receipts on delinquent loans are applied to the reduction of principal. Interest is not computed until the principal has been paid in full. This reduces the effective interest rate from three percent (3%) to as low as two and one-fifth percent (2 1/5%). This effectively provides motivation for a borrower to default and penalizes those borrower/mortgagors who maintain payments in a current manner. The effect of this proposed rule will eliminate the incentive to default and provide equitable treatment between borrowers who default and those who remain in a current status.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the Finding of Inapplicability is available for public inspection during regular working hours at the Office of the Rules Docket Clerk, Office of the

General Counsel, Room 10245, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, the Department proposes to amend Title 24 CFR Part 445 as follows:

#### § 445.1 Application of payments.

When a debt is paid in installments and interest is collected, for a Section 312 loan, the installment payments will first be applied to the payment of accrued interest and then to principal as prescribed in § 102.10 of the Joint Regulations of the General Accounting Office and the Department of Justice. (4 CFR 102.10)

(Sec. 7(d), Department of HUD Act; 42 U.S.C. 3535(d). [38 FR 27216 Oct 1, 1973]. Section 312 of the Housing Act of 1964, (42 U.S.C. 1452b).)

In accordance with section 7(c) (4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at that time for public comment.

Issued at Washington, D.C., November 7, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for  
Housing—  
Federal Housing Commissioner.  
(FR Doc. 78-35933 Filed 12-26-78; 8:45 am)

[4210-01-M]

[24 CFR Part 870]

[Docket No. R78-600]

### PHA-OWNED PROJECTS—DEMOLITION OF STRUCTURES OR DISPOSITION OF REAL PROPERTY

#### Proposed Policy, Procedures, and Guidance

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: The Secretary is amending part 870 to provide policy, procedures, and guidance for Public Housing Agencies (PHAs) in carrying out either partial or total demolition of structures and partial or total disposition of land for PHA-Owned Public Housing projects.

DATE: Public comments must be received by HUD on or before January 28, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Each person submitting a com-

ment should include his or her name and address, refer to the document by the docket number indicated in the heading, and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above. The proposal may be changed in the light of the comments received.

#### FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6460. (This is not a toll free number.)

#### SUPPLEMENTARY INFORMATION:

This part pertains to proposed action by a PHA to demolish housing units or other structures of a public housing project, or to sell or otherwise dispose of land of a public housing project, or to any combination of those types of action. It provides that prior HUD approval shall be required for any of these actions and prescribes procedures and criteria for HUD approval. This part covers partial demolition or disposition (i.e., affecting only a part of the structures or land of a public housing project) as well as transactions involving demolition of all of a project's structures and/or disposition of all of a project's land. Cross-reference is made to part 868, Low-Income Housing—Modernization Program, in connection with consideration of physical rehabilitation as an alternative to demolition or disposition.

This part is consistent with section 6(f) of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, which requires the inclusion in each Annual Contributions Contract of a provision that, when a PHA and HUD mutually agree that a housing project is "obsolete" as to physical condition, or location or other factors, making it unusable for housing purposes, a program of "modifications or closeout" shall be prepared.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedure. A copy of the Finding of Inapplicability is available for public inspection during regular business hours at the above address.

Accordingly, the Department proposes to amend Chapter VIII of Title 24 of the Code of Federal Regulations by adding part 870 as set forth below.



**PART 870—PHA-OWNED PROJECTS—DEMOLITION OF STRUCTURES OR DISPOSITION OF REAL PROPERTY**

- Sec.  
870.1 Purpose.  
870.2 Applicability.  
870.3 Definitions.  
870.4 HUD policy.  
870.5 HUD review of PHA requests.  
870.6 A-95 clearance.  
870.7 Criteria.  
870.8 Tenant participation.  
870.9 Disposition of excess property.

**§ 870.1 Purpose.**

This part sets forth policy, procedures and criteria for HUD review of requests by public housing agencies (PHAs) for authority to demolish structures and/or dispose of real property of PHA-owned, low-income public housing projects.

**§ 870.2 Applicability.**

This part applies to PHA-owned, low-income public housing projects which are subject to Annual Contributions Contracts (ACCs) between PHAs and HUD under the United States Housing Act of 1937. It does not apply to the Section 23 and Section 10(c) Leased Housing Programs or the Section 23 and Section 8 Housing Assistance Payments Programs. Nor does this part apply to the sale of dwellings to homebuyers, under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program.

**§ 870.3 Definitions.**

"Demolition" means the demolition of one or more structures of a public housing project.

"Disposition" means the conveyance by a PHA, pursuant to sale or other transaction, of any interest in the real estate of a public housing project, e.g., fee title, leasehold, right-of-way or easement, except for leasehold interests incident to the normal operation of the project for low-income housing and related purposes.

**§ 870.4 HUD policy.**

It is HUD's policy to conserve and maintain the existing stock of low-income public housing to the maximum extent consistent with considerations of need and feasibility. Unless it can be demonstrated that a project, or a portion of a project, is excess to local needs for low-income housing, every reasonable effort will be made by HUD and the PHA to keep the property within the low-income housing inventory. If a project, or a portion of a project, is not excess to local needs, but is unsuitable for housing use because of its physical condition, every reasonable effort shall be made to return it to a condition suitable for housing use, through the Moderniza-

tion Program or other means. Accordingly, HUD will limit approval for demolition or disposition to those cases where such action can be fully justified in accordance with the criteria set forth under this part.

**§ 870.5 HUD review of PHA requests.**

Written HUD approval shall be required prior to any demolition or disposition, or any transaction involving both demolition and disposition. To obtain HUD approval, the PHA shall submit to HUD a written request describing the proposed action, the property involved and such other information as HUD shall require for a decision based on the criteria set forth in § 870.7 and other applicable requirements, including provisions of the National Environmental Policy Act of 1969. Upon consideration of the PHA's request, supporting documentation and any other relevant information, HUD will notify the PHA in writing of its decision.

**§ 870.6 A-95 Clearance.**

With respect to any request for demolition or disposition of 100 or more dwelling units, or any lesser number of dwelling units comprising all of the dwelling units of a project, the following requirements shall be applicable:

(a) At least 45 days prior to the submission of the PHA's request to HUD, the PHA shall transmit a copy of the request to the appropriate State and areawide A-95 clearinghouses for review and comment, unless the clearinghouses relinquish this requirement prior to the submission of the request to HUD.

(b) The PHA shall transmit all clearinghouse comments with the request to HUD. If comments are not received by the PHA within the 45 day period, the PHA shall include a statement indicating that the clearinghouses were notified and no comments were received.

(c) If the A-95 review comments contain any finding of inconsistency with State, areawide or local plans or non-compliance with environmental or other applicable requirements, the PHA must state how it proposes to resolve the finding or state its justification for proposing to proceed with the requested action despite the finding.

**§ 870.7 Criteria.**

HUD shall use the following criteria in determining whether a PHA's request for demolition and/or disposition is justified under the policy stated in § 870.4:

(a) Current and projected needs for low-income housing in the jurisdiction served by the PHA, taking into account both demand and supply factors. If there is a local need for low-income housing, the PHA's request for

demolition or disposition of dwelling units shall include a plan for replacement housing on a one-to-one basis, subject to the availability of funds.

(b) The physical condition of the property and, where pertinent, the feasibility of rehabilitation, from an engineering and cost standpoint and the availability of funds for rehabilitation.

(c) The PHA's plan for relocating any displaced tenants to other decent, safe and sanitary housing within their means.

(d) Location, in terms of any condition in the surrounding neighborhood that adversely affects the life, health or safety of project residents.

(e) Social conditions which have seriously adverse effect on the suitability of the project as a living environment.

(f) The project's density and related needs for open space, for recreation, parking or other purposes.

(g) Benefits to the project from disposition of a limited interest in project real estate (e.g., easement, right-of-way or dedication for public use).

(h) Effects on the surrounding neighborhood and wider community.

(i) Views of tenants, the local governing body, other governmental agencies, community organizations and any other interested parties.

**§ 870.8 Tenant Participation.**

Before submission to HUD of a request for demolition and/or disposition the PHA shall notify the residents of the project and the resident organization, if any, of the proposed request, afford residents a reasonable opportunity to present their views on the proposal and alternatives to it, and give full and serious consideration to resident recommendations. The PHA shall provide HUD with an evaluation of resident recommendations, indicating the reasons for PHA acceptance or rejection. The PHA shall also provide a copy of this evaluation to the residents and the resident organization, if any. After HUD's decision on the PHA's request, the PHA shall inform the residents and the resident organization, if any, of the decision. The provisions of this section shall not apply in emergencies, where it can be demonstrated that adherence to them would result in delay endangering life, health or safety. At the request of a PHA, compliance with the provisions of this section may be waived by HUD with regard to the disposition of limited interests in a project's real estate (e.g., an easement) which do not include dwelling units or significantly reduce amenities available to project tenants.

**§ 870.9 Disposition of Excess Property.**

Where HUD approves the disposition of real property of a project, the

PHA shall, in accordance with the requirements of the ACC, determine such property to be excess and shall sell it as soon as practicable, unless another method of disposition is approved by HUD. The proceeds of sale or other disposition shall be applied as directed by HUD in accordance with the ACC.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 4, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing—  
Federal Housing Commissioner.

[FR Doc. 78-35934 Filed 12-26-78; 8:45 am]

[6560-01-M]

**ENVIRONMENTAL PROTECTION AGENCY**

[40 CFR Part 52]

[FRL 1007-31]

**APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

Proposed Revision to the New Jersey Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** This notice announces an Environmental Protection Agency proposal to approve a request from the State of New Jersey to revise its air quality control plan and to promulgate a related provision to such plan. The State is requesting that certain changes it has made to its regulation entitled, "Sulfur in Fuels," be incorporated into the New Jersey State Implementation Plan. If approved by the Environmental Protection Agency, these changes will provide for increases in the sulfur content limitations now applicable to fuels used in Atlantic, Cape May, Cumberland, Ocean, Salem, Burlington, Camden, Gloucester, and Mercer Counties. These proposed changes to the New Jersey regulation complement proposed changes to the Pennsylvania State Implementation Plan and are intended to resolve regulatory inconsistencies among the various jurisdictions in the Philadelphia Interstate Air Quality Control Region in a manner which protects air quality.

**DATE:** Comments must be received or a hearing requested on or before January 26, 1979.

**ADDRESSES:** All comments should be addressed to: Eckardt C. Beck, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007.

Copies of the proposal are available for public inspection during normal business hours at: U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10007; U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, (Docket No. 2A-78-1); and New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:**

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007, 212-264-2517.

**SUPPLEMENTARY INFORMATION:** On August 10, 1978 the Environmental Protection Agency (EPA) received from New Jersey a proposed revision to its State Implementation Plan (SIP). The State's submittal consisted of a revised State regulation entitled "Sulfur in Fuels" (Subchapter 9 of Chapter 27, Title 7, New Jersey Administrative Code (N.J.A.C. 7:27-9.1 et seq.)) and an Order of Adoption signed by the Commissioner of the New Jersey Department of Environmental Protection (NJDEP).

The proposed SIP revision changes Subchapter 9 in the following manner:

1. There are additions, deletions and changes to the definitions appearing in Section 9.1.

2. The provisions of Section 9.2, "Commercial Fuel Oil," and Section 9.3, "Noncommercial Fuel," have been combined into a new Section 9.2 entitled, "Sulfur Content Standards." The major change to the provisions of these sections involves applicable fuel oil sulfur content limitations:

- a. In Atlantic, Cape May, Cumberland and Ocean Counties the previous sulfur content limitations of 0.7 percent for No. 4 fuel oil and 1.0 percent for No. 5 and heavier fuel oils have all been changed to 2.0 percent.

- b. In Salem County the previous sulfur content limitations of 0.2 percent for No. 2 and lighter fuel oils and 0.3 percent for No. 4 and heavier fuel oils have been changed to: 0.3 percent for No. 2 and lighter fuel oils; 0.7 percent for No. 4 fuel oil; and 1.0 percent for No. 5 and heavier fuel oils.

- c. In portions of Burlington, Camden, Gloucester and Mercer Counties not designated as a part of the pine barrens the previous sulfur content limitation of 0.3 percent for No. 5 and heavier fuel oils has been changed to 0.5 percent.

3. Section 9.4, "Exemptions," is now codified as Section 9.3. Among other minor changes to this section is one which permits the State to set more stringent sulfur limitations than would normally apply to sources of air pollution which experience aerodynamic downwash at their stacks.

4. Section 9.5 which permitted the State to grant temporary variances from applicable sulfur limitations to sources in Salem, Cumberland and parts of Cape May County has been deleted.

This request by New Jersey is the product of the State's participation in a multi-state effort involving New Jersey, Pennsylvania and Delaware to provide for attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide in the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR) and to resolve regulatory inequities among the various jurisdictions in the AQCR.

Since 1974 sources in the New Jersey portion of the Metropolitan Philadelphia AQCR have been subject to a sulfur content limit of 0.3 percent in heavy fuel oils and 0.2 percent in light fuel oils while sources in the Pennsylvania jurisdictions on the western bank of the Delaware River were subject to higher limitations. Effective October 1, 1973 the Pennsylvania SIP, as approved by EPA, required a reduction in sulfur content to lower limits equivalent to those in New Jersey in the City of Philadelphia. However, implementation of the required reduction has been postponed several times.

In late 1975, NJDEP petitioned EPA to take action to assure the implementation of a more equitable set of requirements throughout the region. Sulfur dioxide control strategies for the portions of Delaware, Pennsylvania, and New Jersey which comprise the Metropolitan Philadelphia AQCR have been under review by EPA and the affected states since that time. Initial proposals to change sulfur-in-fuel-oil standards by both Pennsylvania and Philadelphia were unacceptable to NJDEP. Subsequent failures by the involved parties to agree on modifications to those proposals resulted in New Jersey's announcement, on October 11, 1977, of its intent to seek judicial relief in accordance with the Clean Air Act.

Concurrent with the Metropolitan Philadelphia AQCR analysis, New Jersey undertook a similar air quality evaluation for the four counties which



comprise the New Jersey Intrastate AQCR. Sulfur-in-fuel strategies instituted in the Philadelphia area are pertinent to air quality in the New Jersey Intrastate AQCR in that as much as 50 percent of the sulfur dioxide concentration measured in the Intrastate Region is claimed to be generated in, and transported from, sources located in the Philadelphia area.

In January 1976, while the two regional studies were being conducted, Governor Byrne issued an Executive Order calling for immediate steps to modify the sulfur-in-fuel-oil standards in South Jersey where it was possible to do so without jeopardizing State or federal air quality standards. Variances were issued by the State and approved as SIP revisions by EPA for industrial plants in Salem and Cumberland Counties and for Atlantic City Electric's B. L. England Generating Station in Cape May County after technical studies indicated no likelihood for contravention of the standards existed and after a system of air quality monitors was established. These variances have been renewed several times by the State and EPA. If EPA approves the limitations proposed in this FEDERAL REGISTER notice, they will replace the limitations currently in effect under the New Jersey variances, and EPA approval of these variances will be terminated.

In April 1978, Pennsylvania completed its proposed sulfur dioxide regulatory changes for southeastern Pennsylvania. A Memorandum of Agreement was entered into by NJDEP, EPA Region II, and EPA Region III which sets forth a commitment by the parties to process these regulatory changes in accordance with an agreed upon schedule. The amended regulations have been submitted to EPA as a revision to Pennsylvania's SIP. The complementary New Jersey proposal was drafted, reviewed in public hearing on July 13, 1978, and submitted to EPA as a SIP revision on August 10, 1978.

This current SIP revision request was submitted to EPA in accordance with all applicable EPA requirements as contained in 40 CFR Part 51.

EPA has found in its review of the technical information generated under an EPA funded contract and the technical information submitted by the State that this proposed SIP revision will not result in the contravention of any applicable air quality standard or Prevention of Significant Deterioration (PSD) increment (established pursuant to Section 163 of the Clean Air Act, as amended). However, the technical analyses submitted are predicated on the assumption that two power generating facilities located in the Metropolitan Philadelphia Interstate AQCR continue to burn fuel oil rather

than coal. Under an existing New Jersey regulation, "Sulfur in Coal" (N.J.A.C. 7:27-10.1 *et seq.*), these two oil burning facilities, the Atlantic City Electric Company's Deepwater facility in Salem County and the Public Service Electric and Gas Company's Burlington facility in Burlington County, could make a conversion to bituminous coal with a sulfur content of up to 1.0 percent, by weight, or up to 1.5 percent, by weight, if granted a variance by the State. Since these facilities have burned coal in the past and are believed not to have to undergo any major reconstruction or construction in order to burn coal now, they may not be subject to the 0.20 percent sulfur content limitation provided under the State's "Sulfur in Coal" regulation for large sources that undergo expansion, reconstruction or construction.

As mentioned, the technical demonstration of the air quality impact of this proposed revision to N.J.A.C. 7:27-9.1 *et seq.* did not include a consideration of the potential effect of these coal conversions. Since Section 110 of the Clean Air Act requires that implementation plans or revisions thereto not be approved by EPA in the absence of an adequate technical demonstration that such plans or plan revisions provide for attainment and maintenance of air quality standards, EPA must condition any approval of this proposed revision on the assurance that, if the coal conversions mentioned were to be made, they would be accompanied by any necessary "offsetting" emission reductions.

Any potential conversion from fuel oil to coal by the two facilities would require a permit to be issued by the State of New Jersey. However, a review of New Jersey's current permitting requirements does not assure EPA that the conversions would be allowed by the State only after a full analysis of the permitted conversions' effect on air quality, particularly with respect to the effect on air quality within the Pennsylvania portion of the Metropolitan Philadelphia AQCR. This concern is reinforced by the fact that, as mentioned, these two conversions could occur without a reconstruction of the facilities, which would otherwise trigger the stringent coal sulfur content limitations provided in the State's "Sulfur in Coal" regulation. Also, conversions, as fuel switching, would not normally subject a source wishing to convert to EPA requirements with respect to new source review. In light of all these circumstances, EPA believes that a potential, limited gap exists in the State's control strategy for sulfur oxides which must be redressed by proposed corrective federal action contemporaneous with EPA's approval of the State sub-

mitted revision to N.J.A.C. 7:27-9.1 *et seq.*

It is therefore proposed that the State be required to submit to EPA for review an analysis of the air quality impact of any conversion to coal at the Atlantic City Electric Company's Deepwater Generating Station in Salem County or the Public Service Electric and Gas Company's Burlington Generating Station in Burlington County prior to issuance of a State permit authorizing such conversions. Upon a finding by EPA that the conversion to coal, at the sulfur-in-coal limit specified in the proposed permit, would not result in the contravention of air quality standards and would not cause PSD increments to be exceeded, the State permit could be granted. Should EPA find that the conversion would result in the contravention of standards or the exceedance of PSD increments, the State permit could not be granted, and the conversion could not occur, until an equivalent emission reducing strategy had been submitted by the State and approved by EPA as a revision to the SIP. A similar procedure would be followed if the State were to increase the permitted sulfur-in-coal limitation subsequent to an initial conversion.

It must be emphasized that this procedure is not meant to give EPA the right to veto any proposed fuel conversion. It merely ensures that the State and EPA have an opportunity to take a "second look" at the adequacy of the State's control strategy if a fuel conversion is to take place. If the conversion can be accommodated within the existing strategy, it may take place without further action. If not, appropriate revisions to the strategy (to be initiated by the State) must occur prior to the conversion being permitted.

Persons wishing to comment on this proposed action may do so by submitting written comments or by requesting a public hearing within 30 days of publication of this notice.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. By amending Subpart FF § 52.1601 by adding new Paragraph (b) as follows:

§ 52.1601 Control Strategy and Regulations: Sulfur Oxides.

(b) Before any steam or electric power generating facility in Zone 3, as defined in N.J.A.C. 7:27-10.1, burning fuel oil on (the date of publication of EPA's final action on this revision request), having a rated hourly gross

heat input greater than 200,000,000 British Thermal Units (BTU's), and capable of burning coal without major reconstruction or construction which was in operation prior to May 6, 1968 or group of such facilities having a combined rated hourly capacity greater than 450,000,000 BTU's may be permitted by the State to convert to the use of coal, the State shall submit to EPA a copy of the proposed permit together with an air quality analysis employing methodology acceptable to EPA. If EPA determines, on the basis of the submitted analysis, that the proposed coal conversion will not interfere with the attainment or maintenance of air quality standards and will not be the cause of an exceedance of any Prevention of Significant Deterioration (PSD) increment, then the permit authorizing conversion may become effective immediately upon the publication of such a determination (as a Notice) in the FEDERAL REGISTER. If EPA determines that the submitted analysis is inadequate or that it shows that the proposed conversion will interfere with attainment or maintenance of air quality standards or cause the exceedance of a PSD increment, then EPA shall so inform the State of its determination, and the permit authorizing conversion shall not become effective until an adequate analysis is submitted or, if necessary, until a control strategy revision which would require necessary emission reductions were submitted by the State and placed into effect as an EPA approved revision to the implementation plan. In addition, this same procedure shall apply to any State permit applied for that would authorize a relaxation in the sulfur-in-coal limitation at any such facility, as defined, having already been granted a permit to convert to coal.

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted or a public hearing requested on whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Section 110(a)(2)(A)-(K), (a)(3) of the Clean Air Act and EPA regulations in 40 CFR Part 51.

(Sec. 110, 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: December 5, 1978.

ECKARDT C. BECK,  
Regional Administrator,  
Environmental Protection Agency.  
(FR Doc. 78-35886 Filed 12-26-78; 8:45 am)

[6560-01-M]

[40CFR Part 52]

[FRL 1007-2]

#### COMMONWEALTH OF PENNSYLVANIA

##### Proposed Revisions of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendments to the Philadelphia Code relating to Air Management and to the Pennsylvania Code relating to Environmental Resources.

SUMMARY: The Commonwealth of Pennsylvania has requested that certain amendments to their regulations and those of the City of Philadelphia relating to the sulfur content of fuel burned in southeastern Pennsylvania be reviewed and processed as a revision of the Pennsylvania State Implementation Plan for meeting air quality standards. These amendments are designed to attain and maintain the air quality standards for sulfur dioxide and to resolve regulatory inequities among the various jurisdictions in the Philadelphia metropolitan area.

DATE: Comments must be received on or before January 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Brian McLean (3AH12), U.S. Environmental Protection Agency, Region III, 6th & Walnut Sts., Philadelphia, PA 19106, telephone number (215) 597-8179.

ADDRESSES: Copies of the proposed revisions are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: Mr. Brian McLean; Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, Third and Fulton Streets, Harrisburg, Pennsylvania 17120. Attn: Mr. Gary Triplet; Philadelphia Air Management Services, 301 Arch Street, Philadelphia, Pennsylvania 19106. Attn: Mr. William Reilly; and Public Information Reference Unit, Room 2922 (EPA Library), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments submitted on or before January 26, 1979, will be considered and should be directed to: Mr. Howard R. Heim, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: AHO12cPA.

SUPPLEMENTARY INFORMATION: On July 31, 1978, the Commonwealth of Pennsylvania submitted to the Regional Administrator, EPA Region III, an amendment to Title 3 of the Philadelphia Code relating to Air Management and an amendment to Title 25 of the Pennsylvania Code relating to Environmental Resources. The Commonwealth has requested that these amendments be reviewed and processed as a revision of the Pennsylvania State Implementation Plan (SIP) for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS).

The amendments consist of changes to Section 3-207 (Sale of Fuel Oil) of the Philadelphia Code pertaining to Philadelphia County and changes to Title 25, Part I, Subpart C, Article III, Chapter 121 (Definitions) and chapter 123 (Standards for Contaminants, Sulfur Compound Emissions) of the Pennsylvania Code pertaining to Bucks County, Chester County, Delaware County, and Montgomery County, Pennsylvania.

The request by the Commonwealth of Pennsylvania represents the final action by the Commonwealth as part of a multi-State effort to provide for attainment and maintenance of the NAAQS for sulfur dioxide in the Metropolitan Philadelphia Interstate Air Quality Control Region (MPIAQCR) and to resolve regulatory inequities among the various jurisdictions in the MPIAQCR. The request establishes two regulatory zones in the Pennsylvania portion of the MPIAQCR: An inner zone consisting of Philadelphia County and portions of Bucks County, Delaware County, and Montgomery County adjacent to Philadelphia County and an outer zone consisting of Chester County and the portions of Bucks County, Delaware County and Montgomery County not included in the inner zone. Combustion of residual oil and distillate oil in the inner zone would be limited to 0.5 percent sulfur content by weight and 0.2 percent sulfur content by weight respectively; combustion of residual oil and distillate oil in the outer zone would be limited to 1.0 percent sulfur content by weight and 0.3 percent sulfur content by weight, respectively. Emissions from combustion of non-commercial fuels and coal would be limited to 1.2 pounds per million BTU of heat input in the outer zone or 0.6 pounds per million BTU of heat input in the inner zone except in Philadelphia County where coal combustion is limited to 0.3 percent sulfur by weight and where the concentration of emissions from combustion of non-commercial fuel is limited to 250 ppm on an annual average.

The request by the commonwealth of Pennsylvania has been preceded by



a series of requests by the City of Philadelphia and the Commonwealth of Pennsylvania to delay the effective date for 0.3 percent sulfur by weight in residual oil for Philadelphia County originally scheduled for October 1, 1973.

On February 17, 1977 (42 FR 9685), the Acting Regional Administrator acknowledged receipt of the most recent request to delay the 0.3 percent sulfur-in-fuel requirement dated November 10, 1976. He also summarized actions taken by EPA with regard to the previous requests, proposed the November 10, 1976 request as a revision of the Philadelphia County portion of the Pennsylvania SIP, and provided a 30-day public comment period, ending March 21, 1977. During the public comment period, EPA received comments from the Atlantic Richfield Company, the Penjerdel Corporation and the New Jersey Department of Environmental Protection (DEP). The Atlantic Richfield Company and the Penjerdel Corporation supported the request for a delay until a more equitable regional control strategy, then under development, could be implemented. The New Jersey DEP opposed the request for a delay.

The process of developing a more equitable regional approach to sulfur dioxide control in the MPIAQCR had formally begun in February 1976 with the establishment of an interstate committee composed of representatives from the New Jersey DEP, the Pennsylvania Department of Environmental Resources (DER), the Philadelphia Air Management Services (AMS) and the Delaware Department of Natural Resources and Environmental Control (DNREC). Regions II and III of EPA provided contractual assistance. Although a final report was published in August 1977 which included several regional control strategies, agreement among the participants on a single strategy could not be reached.

Dissatisfied with the progress being made on the development of a regional control strategy, New Jersey DEP advised EPA, the Commonwealth of Pennsylvania, and the City of Philadelphia in October 1977 of their intention to file a lawsuit to force implementation of the 0.3 percent sulfur-in-fuel requirement in Philadelphia. In December 1977, Pennsylvania DER, after consultation with Philadelphia AMS, submitted a regional control strategy to EPA similar to the subject proposed revision. EPA provided contractual assistance to perform air quality modeling of the DER proposal. In April 1978, New Jersey agreed to forbear from their suit in consideration of Pennsylvania's intention to propose the adoption of the subject amendments and EPA's intention to either

adopt the subject amendments or enforce the 0.3 percent sulfur-in-fuel requirement in Philadelphia.

The EPA had not made a final determination on the delay request of November 10, 1976 when the Commonwealth of Pennsylvania submitted the current request on July 31, 1978 for amendments to both the Pennsylvania and Philadelphia Codes. The current request purports to attain and maintain NAAQS for sulfur dioxide, to resolve regulatory inequities among the various jurisdictions in MPIAQCR, and to result in lower regional compliance costs for sources within the Commonwealth of Pennsylvania than would the 0.3 percent sulfur-in-fuel requirement for Philadelphia County.

The Commonwealth of Pennsylvania submitted proof that a public hearing regarding the amendment to the Philadelphia Code was held on April 18, 1978 in accordance with the requirements set forth in 40 CFR 51.4 and that a public hearing regarding the amendment to the Pennsylvania Code was held on June 9, 1978 in accordance with the requirements set forth in 40 CFR 51.4.

This notice is to announce the Regional Administrator's receipt of the amendments and to provide for a 30-day period for public comments to be submitted to the address stated above. The Administrator's decision to approve or disapprove this proposed revision will be based on whether the amendments to Title 3 of the Philadelphia Code and to Title 25 of the Pennsylvania Code meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(42 U.S.C. 7401)

Dated: September 15, 1978.

JACK SCHRAMM,  
Regional Administrator.

[FR Doc. 78-35885 Filed 12-26-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1001-8]

#### DELAYED COMPLIANCE ORDERS

Proposed Delayed Compliance Order for  
Triangle Refineries, Inc., Clermont, Indiana

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Triangle Refineries, Inc. The Order re-

quires the Company to bring the gasoline loading facility at Clermont, Indiana (the source), into compliance with APC-15, Section 4, part of the federally-approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (the act) for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

**DATES:** Written comments must be received on or before January 26, 1979, and requests for a public hearing must be received on or before January 11, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

**ADDRESSES:** Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Arthur E. Smith, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

**SUPPLEMENTARY INFORMATION:** Triangle Refineries, Inc. owns the gasoline loading facility at Clermont, Indiana. The proposed Order addresses emissions from the gasoline loading facility, which is subject to APC-15, Section 4, of the Indiana State Implementation Plan. The regulation limits the emissions of volatile organics (hydrocarbons) and is part of the federally-approved Indiana Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms. The source has agreed to meet the Order's increments during

the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

Dated: October 23, 1978.

JOHN MCGUIRE,  
Regional Administrator,  
Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I as follows:

#### PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.190, Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act, to reflect a approval of the following order.

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION V

In the Matter of: Triangle Refineries, Inc., Clermont, Indiana—Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. Section 7413(d)); Order No.

The Order is issued this date pursuant to Sections 113(a), 113(d) and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. (Act). This Order contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

#### FINDINGS

1. On April 12, 1978, the United States Environmental Protection Agency (U.S. EPA) issued a Notice of Violation, pursuant to Section 113(a)(1) of the Act, to Triangle Refineries, Inc., owned by Kerr-McGee (Triangle), upon a finding that the Clermont Terminal, gasoline loading facility, was in violation of Indiana APC-15, Section 4, a part of the applicable Implementation Plan defined in Section 110(d) of the Act. This finding was based upon emission factor calculations derived from data submitted to U.S. EPA by the subject facility.

2. In satisfaction of Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegate was given to Triangle, and on April 27, 1978, an enforcement conference was held.

3. It has been determined that Triangle is unable to immediately comply with the applicable Implementation Plan.

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Ordered:

1. That Triangle will comply with the Indiana Implementation Plan regulation APC-15, Section 4, as approved by U.S. EPA on May 14, 1973, including a vapor collection and disposal/recovery system, in accordance with the following schedule on or before the dates specified therein.

A. In regard to the gasoline loading facility at Clermont, Indiana:

- August 31, 1978—Triangle shall award contracts for control equipment.
- February 1, 1979—Triangle shall initiate on-site construction for the control equipment.
- July 1, 1979—Triangle shall complete on-site construction.
- July 1, 1979—Triangle shall achieve final compliance with the Indiana Implementation Plan regulation APC-15, Section 4, as approved by the U.S. EPA on May 14, 1973.
- After July 1, 1979, Triangle shall implement operation and maintenance procedures to maximize the control efficiency of the pollution control equipment.

II. That Triangle, Clermont Terminal, gasoline loading facility shall use the best practicable interim system of emission reduction so as to minimize hydrocarbon emissions; avoid any imminent and substantial endangerment to the health of persons; comply with the requirements of the applicable Implementation Plan insofar as it is able to; and, comply with the following interim requirements:

A. Triangle shall insert fill-pipes to the bottom of the loading compartment in a vertical position. Triangle shall control flow rate so as to minimize hydrocarbon emissions.

B. Triangle shall minimize product spillage.

III. That Triangle, Clermont Terminal, gasoline loading facility, shall comply with the following emission monitoring and reporting requirements:

A. *Emission monitoring.* Triangle shall maintain a record of the amount of gasoline which travels through the loading facility. This shall include the volume and vapor pressure of the gasoline.

B. *Reporting requirements.* 1. No later than fifteen (15) days after any date for achievement of an incremental step of final compliance, specified in this Order, Triangle shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this Order, Triangle shall immediately notify U.S. EPA in writing of the anticipated delay and reasons therefore.

2. A quarterly report shall be sent to the U.S. EPA reporting the progress of the program for installation of the control equip-

ment and information required by paragraph III. A.

3. All submittals and notifications to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

IV. Nothing herein shall affect the responsibility of Triangle to comply with State or local regulations, or other Federal regulations.

V. Triangle is hereby notified that its failure to achieve final compliance by July 1, 1979, at the Clermont Terminal, gasoline loading facility may result in a requirement to pay a noncompliance penalty under Section 120. In the event of such failure, Triangle will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

Dated: December 14, 1978.

Douglas M. Costle  
Administrator  
U.S. Environmental Protection Agency

#### WAIVER OF RIGHTS TO CHALLENGE ORDER

Triangle, by the duly authorized undersigned, hereby consents to the provisions of this Order and waives any and all rights under any provisions of law to challenge this Order.

Date \_\_\_\_\_

(Signature of authorized representative of source)

[FR Doc. 78-35706 Filed 12-26-78; 8:45 am]

[6712-01-M]

#### FEDERAL COMMUNICATIONS COMMISSION

[47 CFR PARTS 2 AND 83]

[Gen. Docket No. 78-230]

#### PROVIDING FOR THE USE OF EMERGENCY POSITION INDICATING RADIOBEACONS (CLASS C) FOR VESSELS OPERATING IN COASTAL WATERS

#### Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time for reply comments.

SUMMARY: This action extends the time for filing reply comments in this matter. The United States Coast Guard has requested this extension to conduct additional testing of Class C EPIRBs and to comment on the results of these tests.

DATE: Reply comments must be received on or before February 9, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.



# FOR FURTHER INFORMATION CONTACT:

Robert C. McIntyre, Safety and Special Radio Services Bureau, (202) 632-7197.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of Parts 2 and 83 of the rules to provide for the use of Emergency Position Indicating Radiobeacons (Class C) for vessels operating in coastal waters. Order (See 43 FR 35353, August 9, 1978).

Adopted: December 13, 1978.

Released: December 20, 1978.

1. The U.S. Coast Guard has requested that the time for filing reply comments in this matter be extended for a period of 60 days.

2. The Coast Guard states "Although investigations using prototype models were considered adequate, the comments expressed in response to this Notice of Proposed Rule Making justify additional analyses to ensure that the most effective and acceptable system evolves. In view of the important issue raised in regard to signal environment impacts on channel 16 (156.8 MHz), an additional test program is being initiated immediately. This will require up to 60 days to conduct and respond."

3. The request for extension of time does not comply with the requirements of § 1.46 that such requests be filed 7 days before the filing date. However, in view of the fact that this rulemaking concerns a safety program administered by the USCG and that agency now feels that the comments received raise matters which justify additional analysis of the system, an extension is warranted.

4. For good cause shown, we find the public interest will be served by the extension of the reply comment period from December 11, 1978, to February 9, 1979.

5. Accordingly, pursuant to the authority contained in §§ 0.331 and 1.46 of the Commission's rules, the request of the U.S. Coast Guard is granted and the date for filing reply comments in this proceeding extended to February 9, 1979.

CARLOS V. ROBERTS,  
Chief, Safety and Special  
Radio Services Bureau.

[FR Doc. 78-35969 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-386; RM-3170]

VINITA, OKLA.

Proposed FM Channel

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** Action taken herein, in response to a petition filed by David Leon Boyd and William E. Davis, proposes the assignment of a first Class A FM channel to Vinita, Oklahoma. The proposed station would provide for a first full-time local aural broadcast service to that community.

**DATES:** Comments must be received on or before February 14, 1979, and reply comments must be received on or before March 7, 1979.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

# FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Vinita, Oklahoma). Notice of proposed rulemaking.

Adopted: December 14, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

# 1. Petitioner, Proposal, Comments:

(a) Notice of Proposed Rulemaking is given concerning amendment of § 73.202(b) of the Commission's Rules as it relates to Vinita, Oklahoma. No responses to the petition were received.

(b) Petition for rulemaking<sup>1</sup> was filed on behalf of David Leon Boyd and William E. Davis ("petitioners"), seeking the assignment of Channel 240A to Vinita, Oklahoma, as its first FM assignment.

(c) Channel 240A could be assigned to Vinita in conformity with the minimum distance separation requirements provided the transmitter site is located approximately 12.3 kilometers (7.7 miles) northeast of Vinita. Petitioners state they will file an application to construct an FM broadcast station if the channel is assigned.

# (2). Community Data:

(a) Location: Vinita, seat of Craig County, is located in the northeastern corner of the State, approximately 100 kilometers (62 miles) north of Muskogee, Oklahoma.

(b) Population: Vinita—5,847; Craig County—14,722.<sup>2</sup>

(c) Local Aural Broadcast Service: Vinita is presently served by daytime-only AM Station KVIN, licensed to PBL Broadcasting Company.

(d) Economic Data: Petitioners state that Vinita's economy is dependent largely on agriculture. We are told that there are several small manufacturing plants in the community which also contribute to its economy. Petitioners have submitted detailed demographic information in order to demonstrate the need for a first FM assignment in Vinita. They have also submitted letters in support of the proposed assignment from citizens in the area.

<sup>1</sup>Public Notice of the petition was given on August 15, 1978, Report No. 1136.

<sup>2</sup>Population figures are taken from the 1970 U.S. Census.

tioners have submitted detailed demographic information in order to demonstrate the need for a first FM assignment in Vinita. They have also submitted letters in support of the proposed assignment from citizens in the area.

3. Petitioners assert that the proposed station would be the first full-time aural service in Vinita and Craig County. They state that a full-time facility is badly needed since the Vinita area is in the tornado and severe weather area of the country.

4. In view of the apparent need for a first full-time local aural broadcast service in Vinita and Craig County, the Commission proposes to amend the FM Table of Assignments, 73.202(b) of the Commission's Rules, with regard to Vinita, Oklahoma:

| City             | Channel No. |          |
|------------------|-------------|----------|
|                  | Present     | Proposed |
| Vinita, Oklahoma |             | 240A     |

5. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 14, 1979, and reply comments on or before March 7, 1979.

7. For further information concerning this proceeding, contact Mildred Nesterak, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

# APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only re-submits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (§ 33 § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-35970 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-385; RM-3123]

SAVANNAH, TENN.

Proposed FM Channel

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** Action taken herein proposes the assignment of a second Class A FM channel to Savannah, Tennessee. The proposed assignment could provide for a station which would render a second full-time aural broadcast service to the community. This action is taken in response to a petition for rulemaking filed by the Tennessee River Broadcasting, Inc.

**DATES:** Comments must be filed on or before February 12, 1979, and reply comments on or before March 5, 1979.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

# FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Savannah, Tennessee). Notice of proposed rule making.

Adopted: December 12, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

# 1. Petitioner, Proposal, Comments:

(a) A petition for rule making<sup>1</sup> was filed on May 2, 1978, by The Tennessee River Broadcasting, Inc. ("petitioner"), proposing the assignment of FM Channel 228A to Savannah, Tennessee, as a second FM assignment to that community. No responses to the petition were received.

(b) The channel can be assigned to Savannah, Tennessee, in conformity with the minimum distance separation requirements provided the transmitter site is located 10 kilometers (6.3 miles) northeast of the community.

(c) Petitioner states that if the channel is assigned, it will file an application seeking authority to construct an FM broadcast station to operate on that assignment.

# 2. Community Data:

(a) Location: Savannah, seat of Hardin County, is located in southwestern Tennessee, approximately 160 kilometers (100 miles) east of Memphis, Tennessee, and 173 kilometers (108 miles) southwest of Nashville, Tennessee.

(b) Population: Savannah—5,576; Hardin County—18,213.<sup>2</sup>

(c) Local Aural Broadcast Service: Savannah is presently served by daytime-only AM Station WORM and Station WORM-FM (Channel 269A).

3. *Economic Data:* Petitioner asserts that Savannah's population has increased 29% between 1960 and 1970.

<sup>1</sup>Public Notice of the petition was given on June 7, 1978, Report No. 1125.

<sup>2</sup>Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

and that Hardin County's population, which was 18,212 in 1970, is now estimated to be more than 20,200.<sup>3</sup> We are informed that Savannah is the transportation and economic center for its portion of southern Tennessee. Petitioner notes that the five major employers in the area are Tennessee River Pulp and Paper Company, Brown Shoe Company, Savannah Manufacturing Company, Sattillo Manufacturing and Kay-Windsor Apparel which employ a combined work force of 1,570 people. Petitioner states that there is no daily newspaper in Savannah or Hardin County. It claims that the public interest would be served by the proposed assignment, increasing available broadcast service to a growing region.

4. *Preclusion Study.* Preclusion does not appear to be an impediment since it would be caused only on the co-channel, and the precluded area contains no communities of greater than 1,000 population.

5. Comments are invited on the proposal to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with regard to the community of Savannah, Tennessee, as follows:

| City                | Channel No. |            |
|---------------------|-------------|------------|
|                     | Present     | Proposed   |
| Savannah, Tennessee | 269A        | 228A, 269A |

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

8. For further information concerning this proceeding, contact Mildred Nesterak, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the

<sup>3</sup>1970 Census of Population, Tennessee, General Population Characteristics, U.S. Department of Commerce.



Commission or oral presentation required by the Commission.

**FEDERAL COMMUNICATIONS COMMISSION,**

**WALLACE E. JOHNSON,**  
**Chief, Broadcast Bureau.**

**APPENDIX**

1. Pursuant to authority found in sections 4(f), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only re-submits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-35971 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR, Part 73]

(BC Docket No. 78-384; RM-3177 & RM-3201)

**SCOTTVILLE, MICH.**

**FM Broadcast Stations; Proposed Changes in Table of Assignments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Action taken herein proposes the assignment of FM Channel 240A to Scottville, Michigan. The action is taken in response to petitions filed by Eldon Stielstra and Eugene Barre who state that the proposed assignment would provide for a first local aural broadcast service in Scottville.

**DATES:** Comments must be filed on or before February 12, 1979, and reply comments on or before March 5, 1979.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

**SUPPLEMENTARY INFORMATION:**

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Scottville, Michigan). Notice of proposed rulemaking.

Adopted: December 12, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

1. The Commission has under consideration two petitions for rulemaking seeking the amendment of the Commission's Rules, the Table of FM Assignments. One petition was filed by Eldon Stielstra proposing the assignment of FM Channel 240A to Scottville, Michigan; the other petition was filed by Eugene A. Barre, proposing the assignment of FM Channel 240A (or in the alternative, Channels 276A, 280A or 272A) to Scottville. Channel 240A could be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Each of the petitioners states that he will apply for the channel, if assigned. Several letters from local citizens have been submitted in support of the proposed assignment. No opposition to the proposals has been received.

2. Scottville (pop. 1,202), in Mason County (pop. 22,612), is located approximately 129 kilometers (80 miles) northwest of Grand Rapids, Michigan.

\*Public Notice of Stielstra's petition was given on August 29, 1978, Report No. 1137. Public Notice of Barre's petition was given on September 18, 1978, Report No. 1141.

near the eastern shore of Lake Michigan.<sup>2</sup> There is no local aural broadcast service in Scottville.

3. In support of their proposals, petitioners assert that Scottville is the center of some of the state's finest recreational and farming regions, with the land immediately surrounding Scottville used for the growing of fruit, vegetables and grain. Petitioners note that the principal industry, Stokely-Van Camp Foods, employs 425 people during the packing season.

4. Both petitioners have proposed Channel 240A. Although one of the petitioners has proposed alternate Class A channels in the event that the Channel 240A assignment could not be made, since Channel 240A could be assigned to Scottville in compliance with all minimum distance separation requirements and without affecting any existing FM assignments, we are proposing it for Scottville.

5. Since Scottville is located within 402 kilometers (250 miles) of the U.S.-Canadian border, the proposed assignment requires coordination with the Canadian Government before it can be adopted.

6. In view of the foregoing information, and the fact that the proposed FM channel could bring a first local aural broadcast service to Scottville, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with respect to Scottville, as follows:

Scottville, Michigan—no channel at present—Channel No. 240A proposed.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

**NOTE.**—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

9. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral

\*Population figures are taken from the 1970 U.S. Census.

presentation required by the Commission.

**FEDERAL COMMUNICATIONS COMMISSION,**

**WALLACE E. JOHNSON,**  
**Chief, Broadcast Bureau.**

**APPENDIX**

1. Pursuant to authority found in Sections 4(f), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only re-submits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 78-35972 Filed 12-26-78; 8:45 am]



# **notices**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6320-01-M]

## **CIVIL AERONAUTICS BOARD**

### **AVIANCA AIRLINES**

[Docket 33731]

#### **Reassignment of Proceeding**

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,  
Chief Administrative  
Law Judge.

[FR Doc. 78-36008 Filed 12-26-78; 8:45 am]

[6320-01-M]

### **BRITISH WEST INDIAN AIRWAYS**

[Docket 33733]

#### **Reassignment of Proceeding**

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,  
Chief Administrative  
Law Judge.

[FR Doc. 78-36010 Filed 12-26-78; 8:45 am]

[6320-01-M]

### **DOMINICANA AIRLINES**

[Docket 33732]

#### **Reassignment of Proceeding**

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,  
Chief Administrative  
Law Judge.

[FR Doc. 78-36009 Filed 12-26-78; 8:45 am]

[6320-01-M]

[Docket 33303]

### **FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION**

#### **Hearing**

The hearing on the applications of Air America, Inc. (Dockets 33686, 33687) and of Air Fleets International, Inc. (Dockets 33285, 33286, 33287) will be held in Room 1003, Hearing Room B, at 1875 Connecticut Avenue, N.W., Washington, D.C. 20428, at 9:00 a.m. as follows:

Air America on 10 January 1979.  
Air Fleets International on 24 January 1979.

Dated at Washington, D.C., 19 December 1978.

RUDOLF SOBERNHEIM,  
Administrative Law Judge.

[FR Doc. 78-36007 Filed 12-26-78; 8:45 am]

[6335-01-M]

### **COMMISSION ON CIVIL RIGHTS**

#### **ALASKA ADVISORY COMMITTEE**

##### **Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alaska Advisory Committee (SAC) of the Commission will convene at 5:30 p.m. and will end at 8:00 p.m. on January 10, 1979, Anchorage Westward Hilton, 3rd at E Street, Portage Room, Anchorage, Alaska.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to discuss Committee's study of employment and women and minorities in State government.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-35913 Filed 12-26-78; 8:45 am]

[6335-01-M]

### **CONNECTICUT ADVISORY COMMITTEE**

#### **Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on January 18, 1979, Holiday Inn, Meriden, Connecticut.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-35914 Filed 12-26-78; 8:45 am]

[6335-01-M]

### **NEBRASKA ADVISORY COMMITTEE**

#### **Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nebraska Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 2:30 p.m. on January 27, 1979, 35th Street, Omaha Nebraska 68111.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106.

The purpose of this meeting is to elect SAC officers, ratify the program planning for Fiscal Year 1979 and Fiscal Year 1980, discuss the state agency affirmative action conference and review the subcommittee activity on the Western Nebraska Health Care and Minority Study.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-35915 Filed 12-26-78; 8:45 am]

[6335-01-M]

### **VERMONT ADVISORY COMMITTEE**

#### **Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on January 23, 1979, Tavern Motor Inn, Montpelier, Vermont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 78-35916 Filed 12-26-78; 8:45 am]

[6335-01-M]

### **WYOMING ADVISORY COMMITTEE**

#### **Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Press Conference of the Wyoming Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and will end at 12:30 p.m. on January 10, 1979, Coach Room B, Hitching Post Inn, 1700 West Lincolnway, Cheyenne, Wyoming 82001.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to discuss education project plans and release SAC report.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

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[4310-10-M]  
[3510-25-M]

### **DEPARTMENT OF COMMERCE**

#### **Industry and Trade Administration**

### **DEPARTMENT OF THE INTERIOR** Office of Territorial Affairs

#### **RULES FOR THE ALLOCATION OF WATCH QUOTAS FOR CALENDAR YEAR 1979 AMONG PRODUCERS LOCATED IN THE VIRGIN ISLANDS, GUAM AND AMERICAN SAMOA**

AGENCY: Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce; Office of Territorial Affairs, Department of the Interior.

ACTION: Final annual rules.

SUMMARY: The rules establish the formula for allocation of calendar year 1979 watch quotas among watch assembly firms in the Virgin Islands and Guam, establish the weights to be attributed to each factor contained in the formula, and provide for the allocation of the American Samoa watch quota. The rules also provide for the allocation of a portion of the quotas in the Virgin Islands and Guam among firms performing specified minimum assembly operations or making minimum wage contributions during a specified base period.

DATE: These rules are effective from January 1 through December 31, 1979, inclusive.

#### **FOR ADDITIONAL INFORMATION CONTACT:**

Richard M. Seppa, who can be reached by telephone on 202-377-2925.

Supplementary Information: The Department of Commerce and the Department of the Interior (the "Departments") published proposed production incentives applicable to calendar year 1979 allocation of duty-free watch quotas and invited comments from interested parties in the FEDERAL REGISTER dated June 6, 1978 (43 FR 24566 (1978)). Proposed annual rules for the calendar year 1979 allocation of duty-free watch quotas, inviting public comment, were published in the FEDERAL REGISTER dated September 8, 1978 (43 FR 40048 (1978)).

The Customs Simplification Act of 1954 (Pub. L. 83-768) provided for duty-free entry into the customs territory of the United States of products of the U.S. insular possessions which

did not contain foreign materials to the value of more than 50 percent of their total value. The purpose of the 1954 Act was to stimulate the development of light industry in the insular possessions so as to broaden their economic bases. Between 1959 and 1966 the number of watches assembled from foreign components in the insular possessions increased from 5,000 units to over 4 million units, making the insular watch assembly industry the largest to develop under the 1954 Act (which in 1963 was codified into customs law as general headnote 3(a) of the Tariff Schedules of the United States (19 U.S.C. § 1202)).

The Congress recognized it might be appropriate to favor the products of the insular possessions over direct imports "so long as no domestic industry is harmed by the policy" (S. Rep. No. 1679, 89th Cong., 2d Sess. 6(1966)). Concerned about the rapid growth in insular watch shipments and the potential effect on domestic industry, the Congress enacted Pub. L. 89-805 (19 U.S.C. 1202) in 1966 to establish a quota on the number of watches and watch movements which could be entered into the customs territory of the United States any year free of duty under general headnote 3(a). If left unchecked, the Congress reasoned, the duty-free privilege would become "little more than a convenient device for funneling foreign watches into this country."

Under Pub. L. 89-805 the Departments share responsibility for the allocation of each year's quota "on a fair and equitable basis" among producers in each of the possessions. The legislative history of Pub. L. 89-805 clearly indicates that the quota was to be allocated in a manner calculated to reflect and preserve the established character of the industry in the insular possessions and to take into account the cost of labor involved in the assembly of a watch because the labor factor "is a measure of the economic contribution being made by the assembly process, and also is an indication of the degree of assembly work being performed in the islands." The Senate report further indicated that in administering the quota law the Departments "may take into account whatever additional factors they find warranted." The Act specifies that the "allocations made by the Departments are final" and authorizes the Departments "to issue such regulations as they determine necessary to carry out their duties."

In adhering to the intent of the Congress and the purpose of general headnote 3(a) the Departments have since 1967 made quota allocations under formulae which have progressively emphasized labor contributions and, in recent years, corporate income tax payments to the territorial economies.



The Departments' commitment to maximizing the economic contributions to the territories through the exercise of their allocation authorities was reflected in the initial 1967 allocation (32 FR 4178 (1967)). Labor cost, the Departments stated, was "a single common denominator consisting of several factors which together reflect a meaningful contribution to the economy of the insular possession. Furthermore, in making allocations in future years we expect to place increasing emphasis on those factors which foster greater economic contributions to the economies of the insular possessions."

The Departments' allocation formula, in conjunction with the general headnote 3(a) foreign material content limitation, was relatively effective in encouraging firms to engage in meaningful watch movement assembly in the insular possessions, thereby ensuring wage contributions and employment in the economies. Whereas the industry relied almost exclusively on subassemblies (preassembled components) prior to enactment of Pub. L. 89-805, most firms were doing complete or near-complete assembly of the watch movement components by 1975. This was particularly true of the Virgin Islands industry, which receives 87.5 percent of the total quota.\*

In recognition of the importance of the watch assembly industry to the economy of the Virgin Islands, Congress passed Pub. L. 94-88 in August, 1975, in order to preserve and restore the then-floundering industry. After peaking in 1973 with shipments of 4.6 million units (Table 1) and employment of 1200 residents, Virgin Islands production dropped to 4 million units in 1974 and 3 million units in 1975, and employment declined 30 percent during the period. The cost of the foreign components had risen by over 60 percent between 1973 and 1975 chiefly as the result of the devaluation of the dollar. This made it increasingly difficult for producers in the insular possessions to meet the 50 percent foreign value limitation (which required a doubling of the foreign costs) and to compete effectively in the United States. The 1975 legislation permitted watch movements assembled in the insular possessions to have up to 70 percent foreign material value upon entry into the customs territory of the United States. Thus watch movements assembled from components costing the producer \$4.00, which previously had to be sold for no less than \$8.00, could be sold for \$5.72 in the United States.

The Departments supported the 1975 legislation. The Department of

\*In 1975 three Virgin Islands firms shipped a total of 210,000 movements produced from subassemblies.

Commerce, in commenting on the legislation in bill form, stated that "the enactment of this amendment will not diminish the ability of the Department to obtain meaningful economic contributions from the watch assembly firms through the allocation formula...."

Although Pub. L. 94-88 afforded some relief to the Virgin Island watch assembly industry (shipments rose to 4 million units in 1976 and 4.7 million in 1977), the use by some firms of subassemblies also increased, resulting in a decline in their local labor input. As a result the industry's average wages per movement assembled declined during the period from \$1.11 in 1975 to \$.91 in 1977, an 18 percent decrease in the average labor expended in the assembly of each watch movement produced in the Virgin Islands (Table 2).

Early in the program the Departments recognized that not every firm might be able to use all of the quota it earned each year under the published allocation formula. Accordingly, in order to maximize the benefits to the insular economies the Departments provided in their rules for the reallocation of quota voluntarily relinquished by such firms or cancelled by the Departments. Since 1968 reallocation has been made by the Departments "in a manner best suited to contribute to the economy of the territories." In recent years, the Departments have calculated the wage and corporate income tax payments for the preceding calendar year of the firms requesting additional quota, and the share each firm received on reallocation was directly proportionate to its share of the total wage and tax contributions of all of the competing firms. Because, prior to 1975, firms making significant wage and tax contributions were among the firms competing for reallocation of quota, the net result of the reallocation process was to reinforce the incentive features, that is, the direct economic benefit factors, in the published allocation formula. The watch quota allocation rules for calendar 1979 are designed to prevent the deterioration of the headnote 3(a) privilege into merely a tariff-avoidance device which fails to satisfy Congressional expectations in enacting the law. As the Chairman of the Senate Committee on Finance stated in the hearing leading to the enactment of Pub. L. 89-805, "I would like to see the Virgin Islands prosper. At the same time I want to be fair to the American people and fair to the islands.... The thought that occurs to me is that... (insular producers) would have to do ore assembling... would have to... put in the flywheel and do something more to the watch than just screw together a subassembly.... Now, I personally find very little sympathy with

this thing, of letting somebody evade a \$3 tariff by screwing on the back of these watches.... If that is all there is to it, for the life of me, I can't see why we ought to permit that as a loophole to our tariff laws.... I am interested in helping the Virgin Islands, Guam, Samoa to raise their standard of living and honorably and legitimately provide for the needs of their people." (Hearings on H.R. 8436 Before the Senate Committee on Finance, 89th Cong., 2d Sess. 45-47 (1966)). A recent House Ways and Means Committee report has affirmed the Congressional intent in enacting Pub. L. 89-805 by stating that the "quota was expected to prevent to the development of simple pass through (sic) operations which would allow foreign watches to enter the United States duty-free while providing no significant benefits to the economies of the insular possessions." (S. Rep. No. 1679, 89th Cong., 2d Sess. 1966) (H.R. Rep. No. 1670, 95th Cong., 2d Sess. 5 (1978)).

The increased use of low-labor movements in the insular watch assembly industry (Table 3) was of sufficient concern that the Department of Commerce watch quota staff prepared a staff report on the issue in June 1977. Of principal concern was that as the use of preassembled movements increases, the wage and employment benefits accruing to the territories would likely decline. By letter of September 20, 1977 all watch quota firms were advised that the Departments were considering changes in the allocation rules to ensure that the rules would continue to serve as an incentive for all quota firms to engage in meaningful assembly operations.

After assessing not only all comments received in response to the September 1977 letter but also staff analysis, the Departments published in the June 6, 1978, issue of the FEDERAL REGISTER a notice of proposed production incentives (43 FR 24566 (1978)). On September 8, 1978, the Departments published proposed annual rules for the allocation of watch quota for calendar year 1979 (43 FR 40048; 43 FR 42776 (1978)).

Copies of the proposed annual rules were mailed to all watch quota firms and all persons requesting a copy. Interested persons were invited to provide comments on or before 5:00 p.m., October 16, 1978. Although a preference was indicated for written comments, the notice advised that oral comments could be made and that a written report of such comments would be placed on the public record. In response, the Departments received 6 written submissions containing comments and suggestions totalling 109 pages. No oral comments were received during the 45-day comment period. Several written comments received

after the close of the comment period were not considered. In response to their earlier notice on proposed production incentives, the Departments received 13 submissions containing comments totalling 351 pages. All of these comments are on the public record, and those received within the specified time frames have been carefully considered by the Departments.

#### DISCUSSION OF COMMENTS

• The principal issues raised by the comments and the Departments' response to them are described below.

#### EFFECT ON INSULAR EMPLOYMENT

• Some commentators argued that the proposed minimum standards for participation in the proposed incentive portion of the quota could not be met by several of the existing firms and that the employment provided by these firms would therefore be lost to the insular economies. A report commissioned by some low-labor producers and submitted in response to the June 6 proposal was cited to support these claims.

• Others contended that the proposed minimum standards, while a step in the right direction, did not go far enough, and that firms not making significant economic contributions would receive increasingly greater amounts of quota over time, either driving out of business those firms presently making significant contributions to the economy or inducing them to make fewer contributions. They contended that in either event adoption in final form of the rules as proposed would result in significant losses of insular employment.

• One of the firms supporting the rules as proposed stated that "unless something is done about the completely unfair competition of the 2 screw operations," that firm would be forced to convert to assembly techniques using little local labor. On annual shipments of approximately 500,000 units, this conversion, it was stated, would reduce employment in that firm from 70 to 15 persons."

The net effect of the rules on overall employment cannot be accurately predicted without observation of the impact of the rules on the entire industry's ability to utilize the quota available in calendar year 1979. Further discussion of their probable effect on employment, however, is contained

\*During the 1977 verification of company records in Guam, the acting U.S. Government Comptroller for Guam, U.S. Department of the Interior, performed a time and motion study on the "two screw" assembly operation. He reported that the assembly process took between 40 and 45 seconds to perform. On the basis of this analysis the Comptroller concluded that it was feasible for one person to assemble 600 units per 8-hour work day.

in the next section. These rules will not over time result in higher allocations to firms not making significant contributions. In fact, they will result in gradual reductions in the quotas received by such firms if the firms do not adjust their assembly operations in order to increase their economic contributions to the insular possessions. The rules are designed to increase economic benefits to the territories by increasing employment per unit of production.

#### THE DOMESTIC MARKET FOR INSULAR WATCHES

• Some commentators stated that firms using the inexpensive, largely preassembled movements have targeted a part of the domestic market not previously open to insular watch firms; and that the increased requirements will make these firms non-competitive. These commentators stated that the labor-intensive or "Swiss style" companies experienced a decline in shipments between 1977 and 1978 and asserted that the low-labor or "specialty movement" companies provide the key for reversing the industry decline. It was contended by these commentators that the chronic underutilization of quota in recent years demonstrates this decline in the "Swiss style" segment of the industry.

• Other commentators claimed that insular firms making greater local labor contributions have lost sales to the largely preassembled movements and that, unless low-labor firms are required to engage in more labor-intensive operations, additional losses will be incurred, with disastrous effects on the overall level of economic contributions to the territories.

• With respect to the contention that labor-intensive companies' shipments are declining, the Departments note that through September 30, 1978, the Virgin Islands labor-intensive producers shipped 2,982,985 units (compared to 2,831,645 units through the same period in 1977) and paid wages subject to FICA taxes of \$2,725,474. Through September 30 the low-labor firms shipped 422,167 units (compared to 486,332 units in 1977) and generated a payroll of \$234,500. Thus, through the first three quarters of 1978, the labor-intensive firms shipped 87.6 percent of the Virgin Islands total compared with 85.3 percent through the same date in 1977. The labor-intensive firms contributed 92.1 percent of the FICA wages paid and, as of September 30, 1978, were employing 598 workers, compared with 79 workers in the low-labor firms (See table 4 for detailed data on employment and wages in the Virgin Islands watch and watch movement assembly industry in 1977).

These data forecast the probable economic implications for the Virgin

Islands if labor-intensive firms were to convert to low-labor production in the territory. Assuming the low-labor producers had shipped 5,000,000 units of the 1977 Virgin Islands quota, with an average per unit wage contribution of 47¢ (which they actually paid in 1977), local residents would have received only \$2,350,000 in wages. (See table 5 for the shipments and wage share of the low-labor firms in the Virgin Islands, 1967-1977). The labor-intensive firms, in contrast, paid in 1977 approximately \$4,000,000 in wages on shipments of 3.8 million units.

The Departments, moreover, do not consider the underutilization of quota since 1974 as convincing evidence that the labor-intensive segment of the industry, or the industry as a whole, is in decline. The 1974-76 shortfalls were attributable largely to the special circumstances, previously discussed, which were rectified by the 1975 legislation. The effectiveness of this legislation is shown in the fact that in 1976 shipments increased by 32% from the Virgin Islands and 24% overall, and that further increases of 16% and 17%, respectively, were recorded in 1977. Shipments from the Virgin Islands last year, in fact, were the highest in the history of the program, and 1977 shipments from all the insular possessions were second only to 1973.

The 1977 shortfall in quota utilization, in the context of the very high level of shipments, rather than evidencing a "decline", reflected primarily an increase in U.S. apparent consumption of watches and watch movements (Table 6) and changes in the composition of U.S. demand. Although the size of the quota in the 1967-76 period increased or decreased at rates between -1% and +6% per year, in 1977 it increased by 29%, exceeding by 7% the aggregate growth of the preceding ten-year period. This increase came largely as the result of the rapid growth of solid state watches in the U.S. watch market, and insular production may not become significantly involved in that portion of the market due to the low tariff rates applicable to solid state imports. If the 1977 quota had increased within the previous historical pattern, utilization of quota in the Virgin Islands in 1977 would have been approximately 89%.

Watches and watch movements assembled in the insular possessions are marketed through a wide range of outlets, including jewelry stores, catalogs and catalog show rooms, mass merchandisers, drug stores, department stores and discount houses. Insular producers have pursued a variety of marketing and pricing strategies within the types of outlets available. Swiss-affiliated or Swiss-owned companies, for example, normally rely on more expensive movements and have



concentrated sales at the upper end of the insular trade, which is directed predominantly at the low-to-moderate segments of the overall U.S. watch market. These movements retail (usually after additional U.S. processing) in the \$40-and-above range. Some insular producers use better quality, more costly components for sales under nationally known brand names and less expensive movements for other sales. Independents sell where the demand is, whether it be for less expensive or more expensive movements, and their output is usually sold under a variety of brand names and in a variety of outlets. Still other producers assemble the lowest cost movements available and retail them in small shops and discount outlets in major urban markets, or supply them to large discount accounts for national distribution.

There is little incentive for insular firms to assemble pin-lever movements or the quartz analog and electronic display solid state movements in view of the \$.75 to \$.90 duty applicable to these movements upon direct entry from foreign sources into the customs territory of the United States. Moreover, at present wage rates applicable in the insular possessions\*, the possessions are unable to compete successfully against these watches with assembly facilities in the Far East where labor costs are considerably lower.

Most producers have concentrated sales in the low end of the 17- or 21-jewel watch market where the specific rates of duty on watches and watch movements offer the greatest advantage over duty-paid imports. A large portion of the insular production (65 to 75 percent annually of all shipments) is of movements for ladies' watches because the tariff schedules provide for higher duties on the smaller size movements; 17-jewel movements suitable for men's watches, for example, are dutiable at \$1.80 (\$2.30 if automatic), while movements for small ladies' watches less than .6 inch wide are dutiable at \$2.70.

Department of Commerce data indicate the average unit value (reflecting primarily wholesale prices) of duty-paid imports of 17-jewel watches and watch movements was \$12.22 in 1977 (Table 7). The average value of the Virgin Islands products, which are predominantly 17-jewel watches and watch movements, was \$8.92.

The duty-paid import value reflects 17-jewel imports at the high end of the market (in which insular producers normally do not compete), but insular producers can compete reasonably well against the 17-jewel duty-paid imports directed at the low end

and middle of the domestic market by the principal suppliers (Japan and Switzerland). This is due not only to the duty differential but to the fact, as well, that the inflationary pressures and currency fluctuations which affect the insular producers using the Swiss or Japanese components also impact on the cost of direct imports of those movements. Thus, in the low and middle segments of the 17-jewel conventional watch market the primary competition for the insular producers of low to moderately price labor-intensive movements are the other insular producers of less expensive low-labor movements.

The Departments believe this competition within the insular industry will continue. They expect the insular industry will retain its relative share of the U.S. market for conventional jeweled timepieces, which they also expect to remain relatively stable and may increase slightly in absolute terms for the foreseeable future. The conventional mechanical watch remains the market's dominant, stable timepiece (*Jewelers, Circular Keystone*, June, 1978). Department of Commerce trade data through July, 1978 when put on an annual basis, show that duty-paid imports of 17-jewel watches and watch movements are up by 16 percent over 1977 (see Table 8). While industry sources and trade publications project that conventional watches will eventually drop to about one-third of total U.S. consumption and may ultimately be replaced by the quartz analog watch as the most popular timepiece, the increase in domestic consumption of all timepieces is expected to sustain a strong and continuing market in 17-jewel conventional watches, especially in the ladies' conventional watches, which are small and stylish (compared with the solid state watches) and which make up the bulk of the insular production.

Approximately 70% of the 1979 quota for the Virgin Islands will be allocated on the basis of shipments, taxes and wages, and only 30% will be allocated on the basis on minimum number of assembly steps or minimum economic contributions to the territory. No evidence has been placed on the record to support the argument that firms now using the low-labor movements could not through performance of additional assemble operations increase the local labor input by the amount needed to satisfy the provisions relating to that portion of the quota allocated on the basis of minimum number of assemble steps or minimum economic contributions to the territory per unit shipped. The claim that the low-labor firms will have to discontinue operations completely, costing the insular possessions

approximately 150 jobs, is also not supported by the record.

#### MINIMUM ASSEMBLY STEPS OR MINIMUM ECONOMIC CONTRIBUTIONS CRITERIA

● Comments made on features of the rules providing for a portion of the Virgin Islands and Guam quotas to be allocated on the basis of minimum assembly steps or minimum economic contributions include:

That the ratio used for that portion of the 1979 quota to be allocated without reference to the minimum requirements should be uniform for both Guam and the Virgin Islands; and that the ratio proposed for Guam is the one that should be adopted for both territories in the final rules;

That the final rules should specify that the discrete components and labor-input criteria apply to each unit shipped and not as averageable quantities against aggregated shipments;

That wages attributable to casing activities should be included in satisfaction of the proposed labor-input criteria;

That not only wages attributable to casing activities but also wages for strapping, boxing and other incidental activities as well should be excluded;

That, after taking into account in the formula wages attributable to casing activities, the labor-input proposal should be revised to permit as an alternative a direct economic contribution test of wages plus taxes equalling \$1.00 per unit, provided that not less than \$0.60 per unit is attributable to wages; and

That the Departments not utilize first-quarter data in determining a firm's eligibility for allocations on the basis of minimum assembly steps or economic contributions in view of the fact that the data could reflect seasonal fluctuations, unless the Departments are satisfied that the data are not distorted and unless the firm certifies it will not subsequently alter its operations.

● The Departments' responses to these comments are as follows:

The Guam industry has historically relied more heavily than the Virgin Islands industry on the preassembled movements and is currently completely reliant on such movements. With no labor-intensive firms competing for the quota in Guam, there is need for the adoption of rules providing effective incentives for the Guam industry's transition away from operations providing minimal wage contributions. Establishing the same ratio for the Virgin Islands, where 82% of the industry's 1977 production consisted of movements assembled from largely unassembled parts, would result in the appearance of uniform treatment but would in actuality constitute different treatment due to the differing circum-

stances in the two territories. The legislative history to Public Law 89-805, in assigning joint allocation responsibility to the Departments, notes "that all factors important to the proper allocation of quota among each possession's producers will be weighed in proper perspective" S. Rep. No. 1679, 89th Cong., 2d Sess. 8(1966) (Emphasis added).

The discrete components criterion does apply to each unit to be shipped duty-free into the customs territory of the United States if the firm elects to qualify for allocations under that criterion. The labor-input criterion does not apply to each unit shipped but rather to the aggregated shipments as an average amount to be realized. It is the intention of the Departments to provide sufficient flexibility for firms unable or unwilling to rely completely on movements containing at least 26 discrete components to engage in operations which nevertheless, in the aggregate, make economic contributions satisfying the purposes of Pub. L. 89-805.

In taking into consideration wages attributable to casing in the allocation formula and in the economic eligibility criteria, firms will be encouraged to case in the insular possessions (See Table 9 for data relating to casing activity). This would be consistent with the purposes of Public Law 89-805 and the Departments' responsibility to promote substantial economic contributions to the territories. However, in order to ensure such inclusion will not be used to undermine to intent of the economic eligibility criteria, which is to discourage pass-through operations on the movement assembly, that part of the rule addressing the discrete-components and labor-input tests applicable to allocations and reallocations under these provisions has been adjusted.

Establishing an alternative direct-economic-contribution criterion of \$1.00 per unit (with not less than \$0.60 of that amount attributable to wages) would, if casing wages were also included, provide little stimulus for the industry to make substantial economic contributions to the insular possessions.

Strapping and banding wages will not be taken into consideration in the wage factor because straps and bands are not included in the definition of watches and watch movements under Pub. L. 89-805.

Because the 1976 and 1977 first quarter data verified by the Departments do reveal seasonal fluctuations, firms utilizing the first quarter of 1979 as the base period will be required to demonstrate to the Departments that the average labor-cost increases over 1978 levels reflect changes in assembly practices rather than distortions

caused by various factors, such as artificially high wage rates, depressed first quarter shipments, inventory buildup and training expenses. As a condition for receipt of allocations or reallocations based on Subsections 3(a) or 3(b) criteria, firms utilizing either the 1978 or the first quarter 1979 base period will be required to certify to the Departments that they will not alter assembly operations during the remainder of the year in a manner which would result in their failure to satisfy the respective criteria.

#### ALLOCATION FORMULA FACTORS AND THEIR WEIGHTS

● Some commentators claimed that the portion of the quota to be allocated on the basis of shipments, taxes, and wages in the Virgin Islands and Guam underemphasized the labor factor and further weakened the overall purposes of the rules by including shipments as an element in the formula because shipments were already reflected in wages and taxes, the other elements in the formula. These commentators urged the Departments to eliminate shipments as a formula factor and assign weights of 75 percent and 25 percent to wages and taxes, respectively.

● Another commentator suggested that by crediting only those taxes actually paid to the insular governments, the Departments were interfering with the industrial incentive tax programs of those governments. It was recommended that the Departments amend the tax factor to refer only to "gross income taxes payable." The Departments' responses to these comments are as follows:

● The legislative history expressly mentions "production", that is, shipments of watches and watch movements into the customs territory of the United States, as one factor to be considered in the allocation of quota. The Departments have reduced the weight assigned to the shipments factor from 75 percent in 1967 to 25 percent in 1978, and the proposed weight of 20 percent for 1979 is considered appropriate in terms of this factor's weight relative to the other elements in the formula.

● Revising the tax factor to include gross income taxes payable would be inconsistent with the Departments' policy since 1972 to credit only the net income tax contributions to the insular possessions.

#### REALLOCATION OF QUOTA

● One commentator stated that because the purpose of the reallocation procedure "is to maximize utilization of the quota," any quota available for reallocation should "either be freely available to all producers or be availa-

ble to any assembly operation which meets the minimum labor or total economic contribution standards" which were proposed by this same commentator, viz., a total economic contribution of \$1.00 in wages and income taxes, provided that at least \$0.60 is in the form of wages.

● The Departments consider the maximum utilization of the quota desirable but subordinate to the overriding goal of maintaining the industry's economic contributions and avoiding the development of pass through operations inconsistent with headnote 3(a) and Pub. L. 89-805. The Departments believe that the reallocation of quota to producers without regard to their economic contributions to the insular possessions would ignore both of these statutory objectives.

#### CONCLUSION

The final rules remain substantially as proposed but in order to reflect the above considerations are revised to establish a higher labor-input criterion of \$.95, in those instances where the firm engages in casing activities, and a higher assembly criterion of 29 components, including 3 case components, for watches and to specify that any firm electing to qualify for incentive allocations on the basis of its first-quarter wage contributions will bear the burden of demonstrating to the Departments that such data reflect changes in assembly practices. For example, wages resulting from unusual pay increases or from watch movements assembled and not shipped will be discounted for purposes of calculating compliance with the minimum wage criterion.

Also, specific provision is made for a show-cause order to be issued when firms have not complied or appear not to be complying with the certification required under section 7 of the regulation.

In addition, the following modifications of the proposed rules are made: The substance of Sections 1 and 2 of the proposed rules are incorporated in Sections 1 through 3 of the final rules. Sections 3 through 7 of the proposed rules have been redesignated as Sections 4 through 8 in the final rules. Another minor change in the organization of particular sections and editorial changes not previously discussed includes clarification of the definition of "discrete components" (Subsection 6(b) of the proposed rules) in Subsection 7(b) of the rules.

Based on the entire record in this matter, the Departments find that the annual rules will ensure that the overall purposes of general headnote 3(a) will be satisfied.

The Departments will carefully monitor the effect of these new rules on individual companies within the

\* By federal law the minimum wage in the Virgin Islands is scheduled to increase annually from a rate of \$2.65/hr. in January, 1978, to \$3.35/hr. by January, 1981.



watch assembly industry in the insular economies during calendar year 1979. In light of the adjustments which these rules may make necessary careful consideration will be given within the context of the overall purpose of these rules to any petition or appeal pursuant to Section 303.11.

**Drafting information:** The principal authors of these rules were Richard M. Seppa and Frank W. Creel, Statutory Import Programs Staff, Wallace E. Brown and Daniel C. Hurley, Jr., Office of General Counsel, all of whom are with the Department of Commerce.

Accordingly, the rules for the allocation of watch quotas for calendar year 1979 among producers located in the Virgin Islands, Guam and American Samoa are as follows:

Section 1.(a) A portion of the 1979 Virgin Islands quota determined in accordance with subsection 2(a) below and a portion of the 1979 Guam quota determined in accordance with Subsection 2(b) below will be allocated on the basis of (1) the dollar amount of wages, up to maximum of \$14,000 per person, paid by each producer during calendar year 1978 to residents of the territory and attributable to each producer's headnote 3(a) watch and watch movement assembly operations, (2) the dollar amount of income taxes paid by each producer during calendar year 1978 attributable to its headnote 3(a) watch and watch movement assembly operations (excluding penalty payments and income tax refunds and subsidies paid by the territorial governments during calendar year 1978), and (3) the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into customs territory of the United States during calendar year 1978. (b) In making allocations under this formula, a weight of 60 percent will be assigned to the wage factor, a weight of 20 percent will be assigned to the income tax factor, and a weight of 20 percent will be assigned to the shipment factor.

Section 2. (a) An amount representing that portion of the 1979 Virgin Islands quota equal to the ratio of general headnote 3(a) shipments of watches and watch movements from the territory during 1978 to the total 1978 Virgin Islands quota will be allocated among the producers in the Virgin Islands, in accordance with the allocation factors and weights specified in Section 1.

(b) An amount representing that portion of the 1979 Guam quota equal to 75 percent of the ratio of general headnote 3(a) shipments of watches and watch movements from the territory during 1978 to the total 1978 Guam quota will be associated among the producers in Guam, in accordance

with the allocation factors and weights specified in Section 1.

Section 3. The portions of the Virgin Islands and Guam quotas not allocated pursuant to subsections 2(a) and 2(b) respectively, except as specified in Section 4 with respect to Guam, will be allocated among firms meeting the requirements of subsections (a) or (b) of this section. Eligible firms will be allocated quota in accordance with the factors and weights specified in Section 1. Allocations of the portions of the Virgin Islands and Guam quotas under this Section will be made to firms which:

(a) Assembled all watch movements shipped during the base period from unassembled movements having at least 26 discrete components and all watches that is, cased movements, during the base period from at least 29 discrete components, including at least 26 movement components and at least 3 case components; or

(b) Made wage payments during the base period in the territory averaging not less than \$.75 per watch movement and \$.95 per watch assembled and shipped into the customs territory of the United States.

Section 4. Quota set aside for new firms in Guam under subsection 5(b) shall be subtracted from the quota amount allocable under subsection 2(b), before allocations are made pursuant to that subsection.

Section 5.(a) Applications from new firms are invited for the calendar year 1979 American Samoa quota, because the sole recipient in the territory discontinued operations in calendar year 1977, and a new entrant was not selected under the 1978 new entrant provision (43 FR 4274; 43 FR 10718 (1978)). Due to the limited size of the American Samoa quota, the Departments will allocate that quota to the single firm which offers the best prospect of making a meaningful long-term contribution to the economy of the territory.

(b) Applications from new firms are invited for 150,000 units of the calendar year 1979 Guam quota.

(c) Applicants for new-entrant quotas in Guam or American Samoa must complete applicable sections of Form ITA-334P, copies of which may be obtained from the Statutory Import Programs Staff, Room 6894, U.S. Department of Commerce, Washington, D.C. 20230. Detailed instructions for completing ITA-334P will be provided by the Statutory Import Programs Staff together with copies of the application form.

(d) The Departments will consider new entrant applications only from firms able and willing to certify to the Departments that they can meet the minimum assembly or wage contribution criteria established in Section 3.

Following the Secretaries' determination that a qualifying application has been received, an announcement will be published in the FEDERAL REGISTER establishing a closing date for further applications. The closing date shall be 30 days from the date of such notice. In the event no qualifying application is received for the Guam new entrant quota prior to September 1, 1979, and existing Guam quota recipients were able to satisfy the criteria established in Subsection 3(a) or 3(b) during the base period, a portion or all of the Guam quota set aside for new entrants may be reallocated to the 1979 Guam quota recipients in accordance with Subsection 303.5(b) of Title 15 of the Code of Federal Regulations.

Section 6. Reallocation of calendar year 1979 quota which becomes available will be restricted to those firms satisfying the criteria established in subsections 3(a) or 3(b).

Section 7. As used in Section 3 of these rules,

(a) "Wages" means all wages up to \$14,000 per person or \$3,500 per person, depending upon the base period, paid to residents of the territories employed in a firm's headnote 3(a) watch and watch movement assembly operations. Excluded, however, are wages paid to (i) accountants, lawyers or other professional personnel who may render special services to the firm, (ii) persons assembling non-headnote 3(a) watches and watch movements, (iii) persons engaged in the repair of non-headnote 3(a) watches and watch movements, and (iv) persons engaged in the strapping and packaging of watches. Wages paid to persons engaged in both headnote 3(a) and non-headnote 3(a) assembly and repair activities shall be credited proportionately for their headnote 3(a) activities, provided the firm maintains production and payroll records adequate for the Departments' verification of the headnote 3(a) portion.

(b) "Discrete movement components" means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly). Excluded are dials, dial washers, dial screws, hour wheels, hands, automatic mechanisms and related parts, day-date mechanisms and calendar features, and jewels.

(c) "Base period" refers, in calendar year 1979, to

(i) calendar year 1978, or  
(ii) the period January 1, 1979 through March 31, 1979, for firms so electing.

Firms utilizing the first quarter of 1979 as their base period will be required to demonstrate to the Departments that average labor-cost increases over 1978 levels reflect changes in assembly practices rather than distortions caused by factors including artificially high wage rates, depressed first quarter shipments, inventory buildups, and training expenses.

Section 8.(a) All firms must, as a condition for receipt of allocations or reallocations based on Subsections

3(a) or 3(b) criteria, certify to the Departments that they will not alter assembly operations during the remainder of calendar year 1979 in a manner which would result in their failure to satisfy the respective criteria.

(b) If the Departments have reason to believe that a producer has not complied with or is not complying with the certification required by subsection (a) of this Section, they may issue a show-cause order requiring the producer to show cause, within 30 days

of receipt of the order, why the duty-free quota to which it would otherwise be entitled should not be cancelled or reduced by the Departments.

(Pub. L. 89-805, 80 Stat. 1521 (19 U.S.C. 1202) as amended; 15 CFR 303)

Issued at Washington, D.C., on December 18, 1978.

RUTH VAN CLEVE,  
Director, Office of Territorial Affairs,  
U.S. Department of the Interior.

TABLE 1.—Available Quotas, Shipments, and Unused Quota  
(Thousands of Units)

| Year | VIRGIN ISLANDS<br>(87.5% of Total) |           |        | GUAM<br>(8.33% of Total) |           |        | AMERICAN SAMOA <sup>1</sup><br>(4.17% of Total) |           |        | Total  |           |        |
|------|------------------------------------|-----------|--------|--------------------------|-----------|--------|-------------------------------------------------|-----------|--------|--------|-----------|--------|
|      | Quota                              | Shipments | Unused | Quota                    | Shipments | Unused | Quota                                           | Shipments | Unused | Quota  | Shipments | Unused |
| 1967 | 4,106                              | 3,562     | 544    | 391                      | 341       | 50     | 105                                             | 0         | 105    | 4,693  | 3,903     | 790    |
| 1968 | 4,209                              | 3,778     | 431    | 401                      | 322       | 79     | 201                                             | 0         | 201    | 4,811  | 4,100     | 711    |
| 1969 | 4,316                              | 4,106     | 210    | 411                      | 363       | 48     | 206                                             | 0         | 206    | 4,933  | 4,469     | 464    |
| 1970 | 4,393                              | 3,825     | 568    | 418                      | 320       | 98     | 209                                             | 0         | 209    | 5,020  | 4,145     | 875    |
| 1971 | 4,421                              | 3,707     | 714    | 421                      | 320       | 101    | 211                                             | 0         | 211    | 5,053  | 4,027     | 1,026  |
| 1972 | 4,622                              | 4,387     | 235    | 440                      | 348       | 92     | 220                                             | 230       | 0      | 5,282  | 4,955     | 327    |
| 1973 | 4,913                              | 4,635     | 278    | 468                      | 453       | 15     | 234                                             | 234       | 0      | 5,615  | 5,322     | 293    |
| 1974 | 4,874                              | 4,049     | 825    | 464                      | 338       | 126    | 232                                             | 232       | 0      | 5,570  | 4,619     | 951    |
| 1975 | 4,960                              | 3,046     | 1,914  | 472                      | 306       | 166    | 239                                             | 164       | 75     | 5,724  | 4,399     | 1,325  |
| 1976 | 5,000                              | 4,013     | 987    | 477                      | 222       | 255    | 239                                             | 164       | 75     | 5,724  | 4,399     | 1,325  |
| 1977 | 5,476                              | 4,680     | 1,816  | 515                      | 357       | 298    | 309                                             | 129       | 180    | 7,401  | 5,146     | 2,294  |
|      | 52,298                             | 43,768    | 8,530  | 4,979                    | 3,743     | 1,236  | 2,494                                           | 1,082     | 1,412  | 59,771 | 48,596    | 11,178 |

PERCENTAGE OF QUOTA UTILIZED

| Year | Virgin Islands | Guam | American Samoa | Total |
|------|----------------|------|----------------|-------|
| 1967 | 87%            | 87%  | 0%             | 87%   |
| 1968 | 90%            | 80%  | 0%             | 86%   |
| 1969 | 89%            | 88%  | 0%             | 91%   |
| 1970 | 87%            | 77%  | 0%             | 83%   |
| 1971 | 84%            | 76%  | 0%             | 80%   |
| 1972 | 95%            | 79%  | 100%           | 94%   |
| 1973 | 94%            | 97%  | 100%           | 95%   |
| 1974 | 83%            | 73%  | 100%           | 83%   |
| 1975 | 61%            | 64%  | 43%            | 63%   |
| 1976 | 80%            | 47%  | 69%            | 77%   |
| 1977 | 72%            | 58%  | 42%            | 70%   |
|      | 84%            | 75%  | 43%            | 81%   |

<sup>1</sup>There was no quota firm in American Samoa in the 1967-71 period.  
Source: Departments of Commerce and the Interior.

TABLE 2.—Virgin Islands Watch Industry Data (Calendar Years 1972 Through 1977)

|                                                               | Calendar year |             |             |             |             |             |
|---------------------------------------------------------------|---------------|-------------|-------------|-------------|-------------|-------------|
|                                                               | 1972          | 1973        | 1974        | 1975        | 1976        | 1977        |
| 1. Annual quota (units).....                                  | 4,622,000     | 4,913,000   | 4,874,000   | 4,960,000   | 5,008,000   | 6,476,000   |
| 2. Shipments.....                                             | 4,386,521     | 4,634,819   | 4,048,876   | 3,046,757   | 4,012,810   | 4,659,893   |
| 3. Movements assembled ...                                    | 4,342,614     | 4,678,175   | 4,032,322   | 3,042,565   | 4,056,703   | 4,826,618   |
| 4. Wages paid to residents.                                   | \$3,653,935   | \$3,949,015 | \$3,888,797 | \$3,370,560 | \$3,807,010 | \$4,280,974 |
| 5. Wages credited for quota calculation purposes <sup>1</sup> | \$3,365,053   | \$3,731,956 | \$3,704,051 | \$3,165,259 | \$3,706,076 | \$4,051,193 |
| 6. Labor per movement assembled.                              | 0.84          | 0.84        | 0.96        | 1.11        | 0.96        | 0.91        |



TABLE 2.—Virgin Islands Watch Industry Data (Calendar Years 1972 Through 1977)—Continued

|                                                                                        | Calendar year |              |              |              |              |              |
|----------------------------------------------------------------------------------------|---------------|--------------|--------------|--------------|--------------|--------------|
|                                                                                        | 1972          | 1973         | 1974         | 1975         | 1976         | 1977         |
| Total labor.....                                                                       |               |              |              |              |              |              |
| Creditable labor.....                                                                  | \$0.77        | \$0.80       | \$0.92       | \$1.04       | \$0.91       | \$0.81       |
| 7. Net Corporate income taxes <sup>1</sup> .....                                       | \$1,066,524   | \$4,342,003  | \$3,177,941  | \$1,856,943  | \$1,029,890  | \$887,494    |
| 8. Net gross receipts and excise taxes paid; and net customs duties <sup>2</sup> ..... | \$81,518      | \$107,885    | \$152,180    | \$99,821     | \$1,004,857  | \$1,157,053  |
| 9. Annual sales.....                                                                   | \$30,283,721  | \$30,228,295 | \$34,006,377 | \$25,489,582 | \$28,964,330 | \$32,260,352 |
| 10. Number of employees.....                                                           | 1,104         | 1,193        | 1,000        | 847          | 1,007        | 928          |
| 11. Number of companies.....                                                           | 15            | 17           | 17           | 19           | 14           | 15           |

<sup>1</sup>Through 1974 the total amount of wages per employee creditable for quota calculation purposes was the amount of wages subject to FICA taxes. In 1975 and 1976 creditable wages were \$13,200 per person, and in 1977 the amount was \$14,000 per person.

<sup>2</sup>Excludes corporate income taxes exempted by the Virgin Islands Government.

<sup>3</sup>Through 1975 most firms enjoyed a 90 percent Customs duty exemption and a 100 percent exemption on gross receipts and excise taxes. Beginning in 1976 the percentage exemptions were reduced and the exemption given by each firm tied to its labor input per movement shipped.

<sup>4</sup>Approximately 670 employees in the Virgin Islands industry earned \$2,000 or more.

Source: Departments of Commerce and the Interior. Data reported to Departments by the individual companies and verified in the territory by the Departments.

TABLE 3.—Comparison Between Shipments, Wages, and Wages Per Unit Shipped of Firms Using Preassembled Movements and Those of Other Firms in the Virgin Islands and Guam 1974-1977

|            | Low-labor Firms <sup>1</sup> |                             |                |                 | Remainder of Industry |                             |                |                 |
|------------|------------------------------|-----------------------------|----------------|-----------------|-----------------------|-----------------------------|----------------|-----------------|
|            | Units Shipped                | Adjusted <sup>2</sup> Wages | Wages per Unit | Number of Firms | Units Shipped         | Adjusted <sup>2</sup> Wages | Wages per Unit | Number of Firms |
| 1974.....  | 448,188                      | \$208,174                   | \$4.7          | 4               | 3,940,078             | \$3,812,560                 | \$9.7          | 17              |
| 1975.....  | 464,577                      | 145,482                     | .31            | 3               | 1,980,585             | 3,195,384                   | 1.07           | 15              |
| 1976.....  | 921,621                      | 591,152                     | .64            | 6               | 3,202,970             | 3,145,971                   | .98            | 10              |
| 1977.....  | 1,204,087                    | 511,604                     | .42            | 5               | 3,779,191             | 3,651,721                   | .97            | 11              |
| Total..... | 3,038,724                    | 1,456,412                   | 1.41           |                 | 13,902,824            | \$13,805,636                | \$9.9          |                 |

<sup>1</sup>Low-labor firms are firms which use preassembled components on at least 50 percent of their production during the calendar year. The assembly process on "preassembled components" generally involves affixing the barrel and barrel bridge subassemblies to the mainplate subassembly, usually with two or three screws.

<sup>2</sup>Adjusted wages include only wages paid to residents of the territories whose wages are attributable to the firm's headnote 3(a) watch assembly operations. Also excluded are wages paid to any one person in excess of \$13,200 per year (1974-76) and in excess of \$14,000 in 1977.

<sup>3</sup>Excludes one low-labor firm which did not apply for quota in 1977. Therefore wage data on its 1976 operations were not reported to the Departments. Also excluded are data on one labor-intensive firm which discontinued operations in 1976.

<sup>4</sup>Data include one firm which performed labor-intensive assembly on 43 percent of its total production, and had an average wage input of \$.99 on its total production. Deducting this firm's shipments and wages from the 1976 low-labor totals results in wages of \$.49 per unit shipped in 1976, and an average of \$.42 per unit shipped for the 1974-1977 period.

<sup>5</sup>Excludes data on a firm which commenced operations in the fourth quarter of 1977.

Source: Departments of Commerce and the Interior.

TABLE 4.—1977 Virgin Islands Wage and Employment Data

| Wage bracket                                                      |  | 10-500 | 500-1,000 | 1,000-2,000 | 2,000-5,000 | 5,000-10,000      | 10,000+ Cumulative |           |
|-------------------------------------------------------------------|--|--------|-----------|-------------|-------------|-------------------|--------------------|-----------|
| No. of employees:                                                 |  |        |           |             |             |                   |                    |           |
| Low-labor.....                                                    |  | 44     | 23        | 19          | 42          | 15                | 6                  | 149       |
| Other.....                                                        |  | 108    | 84        | 83          | 374         | 207               | 82                 | 842       |
| Total Wages:                                                      |  |        |           |             |             |                   |                    |           |
| Low-labor.....                                                    |  | 10,253 | 16,982    | 28,163      | 155,824     | 94,233            | 92,192             | 397,646   |
| Other.....                                                        |  | 26,071 | 34,939    | 124,152     | 1,020,282   | 1,666,887         | 1,036,530          | 3,908,841 |
| Average Wages:                                                    |  |        |           |             |             |                   |                    |           |
| Low-labor.....                                                    |  | 233    | 738       | 1,482       | 3,710       | 6,282             | 15,365             | 2,669     |
| Other.....                                                        |  | 241    | 728       | 1,496       | 3,724       | 6,243             | 16,718             | 4,642     |
| Percent of employees in bracket:                                  |  |        |           |             |             |                   |                    |           |
| Low-labor.....                                                    |  | 29.5   | 15.4      | 12.8        | 28.1        | 20.1              | 4.0                | 100       |
| Other.....                                                        |  | 12.8   | 5.7       | 8.0         | 32.5        | 31.7              | 7.4                | 100       |
| Percent of payroll in bracket:                                    |  |        |           |             |             |                   |                    |           |
| Low-labor.....                                                    |  | 2.6    | 4.3       | 7.1         | 39.2        | 23.7              | 23.2               | 100       |
| Other.....                                                        |  | 0.7    | 0.9       | 3.2         | 28.1        | 42.8              | 25.5               | 100       |
| RECAPITULATION:                                                   |  |        |           |             |             |                   |                    |           |
| Average pay per job.....                                          |  |        |           |             |             | Low-labor \$2,669 | Other 4,642        |           |
| Percent of employee who earned less than \$2,000.....             |  |        |           |             |             | 58%               | 28%                |           |
| Percent of employees who earned between \$2,000 and \$10,000..... |  |        |           |             |             | 18%               | 64%                |           |

Data derived from W-2's submitted with ITA-Form 334P by all Virgin Islands quota recipients (1978 annual application applicable to calendar year 1977 operations). Approximately 80 employees received wages from more than one firm and therefore are reflected more than once in these tables.

Source: Departments of Commerce and the Interior.

TABLE 5.—Low-labor firm's shares of total Virgin Islands industry shipments and wages—1967-1977

|                         | Number of firms | % of total shipments | % of industry wages <sup>2</sup> |
|-------------------------|-----------------|----------------------|----------------------------------|
| 1967.....               | 3               | 11.1                 | 7.9                              |
| 1968.....               | 1               | 3.0                  | 2.9                              |
| 1969.....               | 1               | 11.1                 | 5.3                              |
| 1970.....               | 3               | 4.7                  | 4.6                              |
| 1971.....               | 1               | 12.1                 | 7.9                              |
| 1972.....               | 3               | 10.5                 | 8.2                              |
| 1973.....               | 3               | 3.8                  | 3.1                              |
| 1974.....               | 2               | 4.2                  | 1.6                              |
| 1975.....               | 1               | 3.5                  | 1.3                              |
| 1976 <sup>1</sup> ..... | 4               | 50.1                 | 15.1                             |
| 1977.....               | 3               | 11.1                 | 9.4                              |

<sup>1</sup>See Footnote 1 on table 3.

<sup>2</sup>For the purposes of this chart wages represent payments only to residents of the territory made by every assembly firm. Wages paid to individuals in excess of the wages subject to FICA taxes each year are discounted from this table for low-labor firms and for the remainder of the industry.

<sup>3</sup>Includes data on one firm which engaged in labor-intensive assembly on 43% of its 1976 shipments and averages \$.99 labor per movement shipped. Firms using subassemblies exclusively had a \$.49 labor per movement shipped in 1976.

Source: Departments of Commerce and the Interior.

TABLE 6.—U.S. Apparent consumption of watches and watch movements and percentage change from preceding year—1967-1977

| Period or year | Apparent domestic consumption | Percentage change |
|----------------|-------------------------------|-------------------|
| 1967.....      | 43,294                        |                   |
| 1968.....      | 44,884                        | +2.5              |
| 1969.....      | 45,191                        | +1.8              |
| 1970.....      | 45,481                        | +0.6              |
| 1971.....      | 47,535                        | +4.5              |
| 1972.....      | 50,535                        | +6.3              |
| 1973.....      | 50,134                        | -1.0              |
| 1974.....      | 51,019                        | +1.8              |
| 1975.....      | 51,516                        | +1.0              |
| 1976.....      | 50,608                        | +29.3             |
| 1977.....      | 69,170                        | +3.8              |

Source: U.S. Tariff Commission/International Trade Commission.

TABLE 7.—U.S. Imports of Conventional Watches, 1977

|                                     | Quantity   | %    | Value         | %    | Ave. Value |
|-------------------------------------|------------|------|---------------|------|------------|
| Total Imports.....                  | 18,432,578 |      | \$188,579,728 |      | \$10.23    |
| Not over 7 Jewel <sup>1</sup> ..... | 14,898,729 | 80.8 | 102,577,147   | 54.4 | 6.88       |
| 8 to 17 Jewel <sup>2</sup> .....    | 3,440,499  | 18.7 | 71,918,386    | 38.1 | 20.90      |
| Over 17 Jewel.....                  | 93,350     | 0.5  | 14,084,195    | 7.5  | 150.87     |

## By Principal Sources

|                                  | Switzerland |      | Japan |      | Hong Kong |      | 807 <sup>3</sup> |      | % of Total Q |
|----------------------------------|-------------|------|-------|------|-----------|------|------------------|------|--------------|
|                                  | % Q         | % V  | % Q   | % V  | % Q       | % V  | % Q              | % V  |              |
| Not over 7 Jewel.....            | 43.6        | 35.4 | 2.5   | 10.7 | 18.3      | 11.6 | 10.5             | 15.9 | 51.3         |
| 8 to 17 Jewel <sup>1</sup> ..... | 50.0        | 53.0 | 32.1  | 32.6 | 13.3      | 10.3 | Insig.           |      | 55.4         |
| Over 17 Jewel.....               | 71.5        | 91.0 | 25.7  | 6.5  | 0.7       | 0.4  | Insig.           |      | 97.2         |
|                                  | 45.0        | 46.3 | 8.2   | 18.7 | 17.3      | 10.3 | 21.8             | 19.0 | 92.3         |

## U.S. Imports of Conventional Movements

|                    | Quantity  | %    | Value      | %    | Ave. Value |
|--------------------|-----------|------|------------|------|------------|
| Total Imports..... | 4,997,042 |      | 40,336,803 |      | \$8.07     |
| 0-1 Jewel.....     | 2,634,670 | 52.7 | 15,404,214 | 38.2 | 5.85       |
| 2-7 Jewel.....     | 876,296   | 17.5 | 6,398,234  | 15.9 | 7.30       |
| 8-16 Jewel.....    | 22,286    | 0.4  | 500,880    | 1.2  | 22.50      |
| 17 Jewel.....      | 1,460,054 | 29.2 | 17,843,837 | 44.2 | 12.22      |
| Over 17 Jewel..... | 3,756     | 0.1  | 189,629    | 0.5  | 50.49      |
|                    | 100.0     |      | 100.0      |      |            |

## 17-Jewel Movement Imports (By Popular Territorial Sizes)

| Sizes             | Switzerland |      |            | Japan |      |            | Hong Kong |     |            | % of Total Q |
|-------------------|-------------|------|------------|-------|------|------------|-----------|-----|------------|--------------|
|                   | % Q         | % V  | Ave. Value | % Q   | % V  | Ave. Value | % Q       | % V | Ave. Value |              |
| Not over 0.6..... | 94.4        | 85.9 | \$14.25    | 4.1   | 2.8  | \$9.51     | N.A.      |     |            | 98.5         |
| 0.6 to 0.8.....   | 78.7        | 86.9 | 11.26      | 17.4  | 12.1 | 6.32       | N.A.      |     |            | 95.1         |
| 1 to 1.2.....     | 84.2        | 84.8 | 8.76       | 10.1  | 8.4  | 8.05       | 3.7       | 3.2 | \$7.55     | 98.0         |

<sup>1</sup>Bulk 0-1 Jewel Pin levers.

<sup>2</sup>Great Majority 17 Jewel—only few specialty movements in odd jewel categories.

<sup>3</sup>807 Imports are articles assembled abroad from, in whole or in part, U.S. components, which have not lost their physical identity nor been enhanced in value except by assembly process (see Schedule 8, Part 1, Subpart B, Tariff Schedules of the United States).

Ave. Value of 17 Jewel watches from Switzerland = \$22.15, Japan = \$21.23, Hong Kong = \$16.18, 807 = Insig.

Source: Department of Commerce, IM 146 (U.S. Imports for Consumption and General Imports, TSUSA, Commodity by Country of Origin).



TABLE 8.—Duty-Paid Imports of Conventional Watches and Watch Movements (1977 and 1978)\*

|                                   | 1978      |            | 1977      |            |
|-----------------------------------|-----------|------------|-----------|------------|
|                                   | Quantity  | Value      | Quantity  | Value      |
| Watches (8-17 jewel) <sup>1</sup> |           |            |           |            |
| 715.0514                          | 1,233,064 | 32,187,151 | 1,068,092 | 36,155,392 |
| 715.0518                          | 408,992   | 7,172,495  | 636,877   | 9,114,569  |
| Totals                            | 1,641,726 | 39,359,646 | 2,304,969 | 45,269,961 |
| Watch movements (17 jewel)        |           |            |           |            |
| 716.3037                          | 401,894   | 6,779,435  | 549,261   | 7,711,770  |
| 716.3137                          | 280,050   | 3,825,347  | 458,062   | 4,950,938  |
| 716.3237                          | 2         | 595        | 1,607     | 72,625     |
| 716.3337                          | 1,196     | 47,145     | 5,186     | 93,664     |
| 716.3437                          | 11,390    | 366,021    | 143,648   | 1,249,393  |
| 716.3537                          | 8,901     | 118,151    | 14,758    | 130,317    |
| 716.3637                          | 50        | 1,078      | 1,790     | 89,165     |
| 717.3037                          |           |            | 111       | 8,417      |
| 717.1337                          | 511       | 10,440     | 671       | 25,934     |
| 717.3237                          | 405       | 61,247     | 1,171     | 141,615    |
| 717.3337                          | 5         | 1,142      |           |            |
| 717.3437                          | 1         | 835        |           |            |
| 717.3537                          |           |            |           |            |
| 717.3637                          | 1,030     | 42,937     | 30        | 1,502      |
| 718.3037                          | 22,950    | 511,844    | 23,167    | 584,229    |
| 718.3137                          |           |            |           |            |
| 718.3237                          |           |            |           |            |
| 718.3337                          | 161,122   | 2,173,550  | 232,285   | 2,802,009  |
| 718.3437                          | 26        | 971        | 862       | 12,598     |
| 718.3537                          | 50        | 4,892      | 1         | 269        |
| 718.3637                          |           |            |           |            |
| Totals                            | 904,671   | 13,969,264 | 1,460,054 | 17,843,837 |
| Grand totals                      | 2,546,397 |            | 3,765,023 |            |

<sup>1</sup>Tariff item 715.0514 covers 8-17 jewel conventional watches with precious metal cases and 715.0518 covers 8-17 jewel conventional movements with base metal cases. The great majority of the watches in these two watch categories have 17 jewel movements.

\* Thru July, 1976.

Source: Department of Commerce IM 146 (U.S. Imports for Consumption and General Imports, TSUSA, Commodity by Country of Origin).

TABLE 9.—Casing of Watch Movements (Virgin Islands and Guam) 1972-1977

|                                 | 1972    | 1973   | 1974    | 1975    | 1976    | 1977    |
|---------------------------------|---------|--------|---------|---------|---------|---------|
| <b>A. Virgin Islands</b>        |         |        |         |         |         |         |
| Total Cased Movements Shipped   | 76,839  | 48,734 | 40,032  | 213,831 | 666,833 | 601,275 |
| Low-Labor Firms <sup>1</sup>    | 71,756  | 42,129 | 4,068   | 64,730  | 107,473 | 107,473 |
| Other Firms                     | 5,084   | 6,605  | 40,032  | 209,763 | 562,103 | 493,802 |
| % of Total Shipments Cased      | 1.75    | 1.06   | 0.99    | 7.03    | 16.37   | 13.00   |
| <b>B. Guam</b>                  |         |        |         |         |         |         |
| Total Cased Movements Shipped   | 43,008  | 44,734 | 79,456  | 43,215  | 5,481   | 71,325  |
| Low-Labor Firms                 | 43,008  | 44,734 | 79,456  | 43,215  | 5,481   | 71,325  |
| Other Firms                     |         |        |         |         |         |         |
| % of Total Shipments Cased      | 12.35   | 9.89   | 23.53   | 10.85   | 4.90    | 19.96   |
| <b>C. Total Cased Shipments</b> | 119,847 | 93,490 | 119,488 | 257,046 | 662,314 | 672,600 |

<sup>1</sup>"Low-labor firms", as used in these tables, refers to those firms which, in any given calendar year, assembled more than half of their total annual shipments from preassembled movements. "Preassembled movements" refers to those movements which, due to the state of their assembly on import into the insular possession, require for completion into a working movement only the assembly of a preassembled barrel subassembly and ratchet wheel onto an otherwise functioning watch movement.

Source: Form ITA-334P (and predecessor forms), U.S. Departments of Commerce and the Interior.

[FR Doc. 78-3551] Filed 12-19-78; 8:45 am]

[3510-25-M]

# DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6-78]

## CHICAGO REGIONAL PORT DISTRICT

Foreign-Trade Zone No. 22, Chicago, Illinois—  
Withdrawal of Application for Zone Expansion and Steel Processing Operations

Notice is hereby given that the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, Chicago, has requested to withdraw its application for authority to expand its zone for certain steel processing operations. The application was filed with the Foreign-Trade Zones Board on May 26, 1978 (Docket No. 6-78), and a public hearing was held on the matter in Chicago on June 20, 1978. The do-

mestic steel industry had voiced opposition to the proposal.

The request for withdrawal has been accepted by the Board's executive secretary and the proposal is considered closed.

Dated: December 19, 1978.

JOHN J. DA PONTE, JR.,  
Executive Secretary,  
Foreign-Trade Zones Board.

[FR Doc. 78-35888 Filed 12-26-78; 8:45 am]

[3510-25-M]

[Order No. 140]

Resolution and Order Approving Application  
for a Foreign-Trade Zone in Multnomah  
County, Oregon

Proceedings of the Foreign-Trade  
Zones Board, Washington, D.C.

## RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

After consideration of the application of the Port of Portland, an Oregon public corporation, filed with the Foreign-Trade Zones Board (the Board) on August 7, 1978, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Multnomah County, Oregon, within the Columbia River Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves an industrial park type zone that envisages the possible construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

GRANT TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN MULTNOMAH COUNTY, OREGON

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encour-

age foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Port of Portland, (the Grantee) has made application (filed August 7, 1978), in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Multnomah County, Oregon, within the Columbia River Customs port of entry;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

WHEREAS, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

NOW, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 45, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District

Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 18th day of December 1978, pursuant to Order of the Board.

FOREIGN-TRADE ZONES BOARD,

C. L. HASLAM,  
Acting Chairman and  
Executive Officer.

Attest: JOHN J. DA PONTE, JR.,  
Executive Secretary.

[FR Doc. 78-35889 Filed 12-26-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Decision on Application for Duty-Free Entry of  
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00400. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Ave., Cambridge, Mass. 02139. Article: 500 kV Metalclad Test Transformer Type TES 510/90BM and accessories. Manufacturer: Messwandler-Bau G.m.b.H., West Germany. Intended use of article: The article is intended to be integrated into and existing Extra-High Voltage test facility at the MIT High Voltage Research Laboratory to allow high voltage research studies under AC as well as DC. These studies are primarily concerned with electrical insulation and high voltage techniques in which electrical breakdown and loss mechanisms are investigated. Initial work with the article will be directed at improving the insulating performance of SF<sub>6</sub> gas-insulated, electric power transmission cables. In addition, the article will be used for educational studies in the field of electrical engineering and physics particularly insulation and electrical discharges.



Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a 400-500 kilovolt output voltage with a 20-50 kilovolt amperes power rating. The National Bureau of Standards advises in its memorandum dated November 30, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory  
Import Programs Staff.

[FR Doc. 78-35895 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### NATIONAL BUREAU OF STANDARDS

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00401. Applicant: National Bureau of Standards, Washington, D.C. 20234. Article: Automatic Inductive ratio-arms bridge, Model A7. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is intended to be used to make precise temperature measurements at several locations in a heat-flow calorimeter on a continuous basis for periods of several days, or in the case of half-life determinations for periods of several months. The calorimeter will in turn

be used to accurately measure the heat produced in radioactive specimens and to relate these values to electrical standards.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides self-balancing precision measurements having a resolution of one part in  $10^7$  and an accuracy of  $\pm 4$  parts in  $10^7$  on a continuous basis over a long period of time. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated November 22, 1978, that the specifications of the article described above are pertinent to the applicant's intended use. HEW also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory  
Import Programs Staff.

[FR Doc. 35896 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### NEW JERSEY INSTITUTE OF TECHNOLOGY

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00384. Applicant: New Jersey Institute of Technology, Chemistry Division, 323 High Street, Newark, N.J. 07102. Article: LKB 8721-4 Closed bomb reaction calorimetric assembly and accessories. Manufacturer: LKB Produkter AB, Sweden. In-

tended use of article: The foreign article is intended to be used in calorimetric studies of strained bridgehead lactams, such as, 6, 6-dimethyl-1-azabicyclo (2.2.2) octan-2-one which exhibits reduced (or zero) pi resonance stabilization since its amide linkage is severely twisted. The enthalpies of combustion and vaporization will be obtained. This research will be also extended to include the compounds required in the synthesis of the 6, 6-dimethyl-1-azabicyclo (2.2.2) octan-2-one parent molecule, 1-Azabicyclo (3.3.1) nonan-2-one which exhibits another unique twisted pi linkage, and 1-azabicyclo (3.2.2) nonan-2-one which when the  $\Delta H_f$  values are compared with 6, 6-dimethyl-1-azabicyclo (2.2.2) would provide some quantitation of Wiseman's rule which explains stability and transient nature of its isomers. The foreign article will also be used in education; two courses Chemistry 491/492 Undergraduate Chemistry Research and in Masters and Doctoral Degree Research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides working temperatures up to 120 degrees centigrade ( $^{\circ}\text{C}$ ) with a temperature stability better than  $0.01^{\circ}\text{C}$ , an accuracy of  $\pm 0.01\%$  and modular compatibility with existing equipment for increased capability. The National Bureau of Standards advises in its memorandum dated November 16, 1978 that (1) the characteristics of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory  
Import Programs Staff.

[FR Doc. 78-35897 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### PURDUE UNIVERSITY

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00313. Applicant: Purdue University, ADMS Building, West Lafayette, Ind. 47907. Article: Superconducting 8.5 T solenoid with power supply. Manufacturer: Oxford Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used to apply state-of-the-art NMR instrumentation for the solution of certain well-defined problems in protein chemistry. The general goals are two-fold: (i) To learn more about the structure and function of particular proteins and (ii) to refine and develop NMR techniques along with other methods of protein chemistry for use in future studies. Five specific problems under investigation are: (1) The active sites of serine proteinases, (2) the mechanisms of interactions between protein proteinase inhibitors and proteinase, (3) the structures of glycoproteins, (4) the mechanism of folding of staphylococcal nuclease, and (5) the mechanism of electron transport in photosynthesis. The article will also be used for educational purposes in the course—Chemistry 696B which is designed as an introduction to the theory of NMR spectroscopy and its applications to biochemical problems.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (February 3, 1978). Reasons: The foreign article provides a field strength of at least 8.5 Tesla with sufficient magnetic field homogeneity to perform high resolution nuclear magnetic resonance experiments. The Department of Health, Education, and Welfare advises in its memorandum dated November 28, 1978 that (1) the capability of the foreign article described above is perti-

nent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory  
Import Programs Staff.

[FR Doc 78-35898 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### SAN DIEGO STATE UNIVERSITY

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00376. Applicant: San Diego State University, 5300 Campanile Drive, San Diego, Calif. 92182. Article: Calorimetric Unit, Model CP-C and Accessories. Manufacturer: Sodev, Inc. Canada. Intended use of article: The article is intended to be used to measure the partial molal heat capacities of various inorganic and organic electrolytes and nonelectrolytes in aqueous solutions at concentrations from 0.05 molal to saturation and at temperatures up to  $80^{\circ}\text{C}$ . The data will be used to check and extend a theory developed for predicting the thermodynamic properties of aqueous electrolytes and other dissolved species up to  $300^{\circ}\text{C}$ . The data obtained up to  $80^{\circ}\text{C}$ , using the flow microcalorimeter, will be combined with our data above  $100^{\circ}\text{C}$ , which is obtained from heat of solution calorimetry, and will be used to calculate the high temperature thermodynamic properties of electrolytes for comparison with the theory.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a flow heat mixing calorimeter with the capability of measuring the density of a flowing liquid to 1 part in  $10^6$  over the temperature range of  $0-80^{\circ}\text{C}$ . The National Bureau of Standards advises in its memorandum dated December 8, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 78-35899 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### UNIVERSITY OF CHICAGO—AGRONNE

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00396. Applicant: University of Chicago Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Ill. 60439. Article: VRT 2121A Reflex Klystron and accessories. Manufacturer: Varian Associates of Canada, Canada. Intended use of article: The article is intended to be used in a "Zebra-stripe" microwave interferometer set up to measure the electron density in Argonne's APEX Tokamak which is being constructed to study plasma wall interaction of fusion type discharges to ignition and methods of



inducing plasma currents with for field.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a frequency in the range between 130-139 gigahertz. The National Bureau of Standards (NBS) advises in its memorandum dated December 12, 1978 that (1) the capability of the article described above is pertinent to the applicant's research purposes and (2) it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 78-35909 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### UNIVERSITY OF MICHIGAN

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00395. Applicant: University of Michigan, 1024 Chemistry Building, 930 North University Avenue, Ann Arbor, Mich. 48109. Article: Switching Unit, Model 128M and Optional Current Switching Facility for 5 Thermometer. Manufacturer: Automated Systems Lab. Ltd., United Kingdom. Intended use of article: The article is an accessory to an existing Automated AC Bridge manufactured by the same manufacturer which is being used for the study and understanding of the energetic spectrum of

matter; the chemical thermodynamic properties of matter including the entropy, enthalpy, tempered Gibbs energy function, etc.; the electronic, structural, as well as the molecular disordering and librational freedom of molecules are both immediate and indirect objectives.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The National Bureau of Standards advises in its memorandum dated December 11, 1978 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which is interchangeable with or can be readily adopted to the instrument with which the foreign article is intended to be used.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 78-35901 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### UNIVERSITY OF PENNSYLVANIA

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th

and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00366. Applicant: University of Pennsylvania, 3400 Walnut Street, Franklin Building, Philadelphia, Pa. 19104. Article: NMR Spectrometer, Model WH-360/180 and accessories. Manufacturer: Schweiz Spectrospin AG, Switzerland. Intended use of article: The article is intended to be used for (1) identifying chemical compounds of small molecular weight, (2) determining the structure of macromolecules such as enzymes and nucleic acids in solution, and (3) studying the interaction between enzymes and substrates. Specific examples of the research to be conducted are:

(a) Kinetics of oxygen-18 exchange between inorganic phosphate and water catalyzed by myosin subfragment, using the "O-shift in <sup>31</sup>P NMR.

(b) Determination of membrane potential by use of <sup>13</sup>C NMR and a shift reagent to measure ionic-probe concentration gradients across the cell membrane.

(c) H NMR studies of hemoproteins substituted with cobaltous hemes. Many of the users of the facility are postdoctoral fellows or graduate students who learn about the application of NMR to biophysical and biochemical proteins. In addition, the article will be used in classes in biophysics, a course which deals with the application of various techniques, including NMR, to the probing of molecular structure.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (January 21, 1977). Reasons: The foreign article provides operation at a high field strength of 360 megahertz with a magnet field strength of 8.4 Tesla. The Department of Health, Education, and Welfare advises in its memorandum dated November 28, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 78-35902 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### UNIVERSITY OF TEXAS SYSTEM CANCER CENTER

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00361. Applicant: The University of Texas System Cancer Center, 6723 Bertner, Houston, Tex. 77030. Article: Phywe Model ICP 11. Pulse Cytophotometer and accessories. Manufacturer: Phywe Co., West Germany. Intended use of article: The article is intended to be used for research in the areas of *In Vitro* and *In Vitro* cell kinetics. Cultured or human biopsy material will be processed to obtain a single cell suspension, using methods previously developed in this laboratory and published in *Cancer Research* and in *Blood*. Cells will then be fixed in ethanol and stained with 2 fluorochromes, ethidium bromide and mithramycin, specifically for DNA. Additional RNase treatment will follow. These measurements serve to identify the cell cycle stage distribution of cultured and human tumor cells as well as to identify aneuploid abnormalities. Both clinical oncology fellows and candidates of the Graduate School of Biomedical Sciences will continue to be involved in the research project, and primary emphasis of the laboratory has been on automated cytology.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a wide band of wavelengths (down to 254 nanometers) in the ultraviolet region of

its fluorescence excitation. The Department of Health, Education, and Welfare advises in its memorandum dated November 7, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 78-35903 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### UNIVERSITY OF WASHINGTON

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00377. Applicant: University of Washington, Department of Pathology, SM-30, Seattle, Wash. 98195. Article: Impulse Cytophotometer, Model 21 and accessories. Manufacturer: Phywe Ag., West Germany. Intended use of article: The article is intended to be used to study the DNA (deoxyribonucleic acid) content and DNA replication of human and animal cells. Experiments will be conducted to determine whether cancer or other clinical manifestations of aneuploidy (abnormal amounts of DNA/cell) can be diagnosed easily and rapidly with this instrument. A major use of the article will be for the courses Pathology 600, 700 and 800 which are research courses for students working on their master's and doctoral degrees. In addition, the article will be used in the course Pathology 530, Human Cytogenetics, to demonstrate modern instrumental methods of chromosomal analysis.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article can measure DNA contents of less than 0.1 picogram and a coefficient of variation of less than 2 percent. The Department of Health, Education, and Welfare advises in its memorandum dated November 22, 1978 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Statutory Import  
Programs Staff.

[FR Doc. 35904 Filed 12-26-78; 8:45 am]

#### [3510-25-M]

##### EXPORTERS' TEXTILE ADVISORY COMMITTEE

##### Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that a meeting of the Exporters' Textile Advisory Committee will be held at 10:00 a.m., on January 31, 1979, in Room 4833, U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee, which is comprised of 20 members involved in textile and apparel exporting, advises Department officials concerning ways of increasing U.S. exports of textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data
2. Report on Conditions in the Export Market
3. Recent Foreign Restrictions Affecting Textiles
4. Other Business

A limited number of seats will be available to the public on a first come basis. The public may file written statements with the Committee before or after the meeting. Oral statements may be prepared at the end of the



meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: December 13, 1978.

ROBERT E. SHEPHERD,  
Deputy Assistant Secretary for  
Domestic Business Development

(FR Doc. 78-36020 Filed 12-26-78; 8:45 am)

#### [3510-25-M]

##### ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

###### Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the electronic instrumentation Technical Advisory Committee will be held on Wednesday, January 17, 1979, at 9:30 a.m. in Room 5230, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the

U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20203, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory Committee and of any subcommittees thereof is hereby published.

Dated: December 21, 1978.

RAUER H. MEYER,  
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

U.S. DEPARTMENT OF COMMERCE, OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION, ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

###### NOTICE OF DETERMINATION

In response to written requests of representatives of a substantial segment of the electronic industry, the Electronic Instrumentation Technical Advisory Committee was established by the Secretary of Commerce pursuant to Section 5(c)(1) of the Export Administration Act of 1969, 50 U.S.C. App. 2404 (c)(1)(1976), to advise the Department of Commerce with respect to questions involving (A) technical matters, (B) worldwide availability, and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic in-

strumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee, which currently has eleven members representing industry and seven members representing government agencies, will terminate no later than August 29, 1980, unless extended by the Secretary of Commerce or her designee. All members of the Committee have the appropriate security clearances.

The Committee's activities are conducted pursuant to 50 U.S.C. App. 2404(c)(1); the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976); and the Office of Management and Budget Circular A-63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, provides that advisory committee meetings or portions thereof may be exempt from the open meeting and public participation requirements of the Federal Advisory Committee Act if the President, or the head of the agency to which the advisory committee reports, determines that such meetings or portions thereof may be closed to the public in accordance with 5 U.S.C. 552b(c).

5 U.S.C. 552b(c)(1) provides that agency meetings or portions thereof may be closed to the public where they are likely to disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Seven Notices of Determination authorizing the closing of meetings, or portions thereof, of the Electronic Instrumentation Technical Advisory Committee and its formal subcommittees, dealing with security classified matters, have been approved in the past.

In order to provide advice to the Department under the terms of its charter, the Committee and formal subcommittees thereof will continue to hold a series of meetings dealing with the matters set forth in the first paragraph of this Determination. These meetings will include discussions of the COCOM control list as it relates to the commodities and technical data under its purview, and with the foreign availability of these commodities and technical data. In addition, the Committee and its formal subcommittees will be preparing recommendations for the Department's consideration relating to the U.S. Government's negotiating position on COCOM-related matters. Much of the information relating to the COCOM control list, as well as proposed changes, is now or will be security classified for national defense or foreign policy reasons, pursuant to Executive Order No. 11652, 3 CFR 339 (1974) or Executive Order No. 12065, 43 FR 28949 (1978). In order for the Committee and its formal subcommittees to provide required advice to the U.S. Government, it will be necessary to provide the Committee and its formal subcommittees with such classified material. Therefore, the series of meetings or portions of meetings of the Committee and of subcommittees thereof that will involve discussions of matters specifically authorized under criteria estab-

lished by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order, must be closed to the public. The remaining series of meetings or portions thereof will be open to the public.

Accordingly, I hereby determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the series of meetings or portions of meetings of the Committee and of any subcommittees thereof, dealing with the aforementioned classified materials shall be exempt, for the period from the date of the signing of this Determination, to August 29, 1980, from the provisions of Section 10 (a)(1) and (a)(3), relating to open meetings and public participation therein, because the Committee and subcommittee discussions will be concerned with matters listed in 5 U.S.C. 552b(c)(1). The remaining series of meetings or portions thereof will be open to the public.

Dated: September 6, 1978.

ELSA A. PORTER,  
Assistant Secretary  
for Administration.

Dated: September 5, 1978.

DANIEL GARBERN,  
Acting Assistant  
General Counsel.

(FR Doc. 78-36035 Filed 12-26-78; 8:45 am)

#### [3510-25-M]

##### FOREIGN AVAILABILITY SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

###### Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, January 16, 1979, at 1:30 p.m. in Room 6029, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977 and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975. On October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The Subcommittee meeting agenda has four parts:

- (1) Opening remarks by the Subcommittee Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Review of East European and U.S.S.R. computer processing data rates.
- (4) New items for Subcommittee consideration.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: December 21, 1978.

RAUER H. MEYER,  
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

(FR Doc. 78-36037 Filed 12-26-78; 8:45 am)

#### [3510-25-M]

##### LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

###### Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, January 16, 1979, at 9:30 a.m. in Room 6029, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has six parts:

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Further discussion of full information of add-ons to small and/or foreign or computer systems installed several years previously.



4. The status of a blanket or a one year license for shows and displays.
5. Discussion of proposed General License Parts: Maintenance and Repair Parts.
6. Discussion of proposed General License G-supplies.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: December 21, 1978.

**RAUER H. MEYER,**  
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36036 Filed 12-26-78; 8:45 am]

#### [3510-12-M]

National Oceanic and Atmospheric Administration

#### FOUR MARINE SANCTUARY CANDIDATES

Intent to Prepare Draft Environmental Impact Statements

**AGENCY:** Sanctuary Programs Office/Coastal Zone Management, NOAA.

**ACTION:** Notice to interested parties of intent to prepare Draft Environmental Impact Statements (DEISs) on four marine sanctuary candidates.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Nancy Foster, SPO/CZM, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235, telephone 202/254-7512.

**SUMMARY:** The Office of Coastal Zone Management announces its intention to prepare draft environmental impact statements on four marine sanctuary candidates—one site off Texas and Louisiana (the Flower Garden Banks), and three sites off California (Point Reyes/Farallon Islands, Monterey Bay and the waters around the northern Channel Islands and Santa Barbara Island).

**BACKGROUND:** Public workshops have been held on the Flower Garden Banks off Texas and Louisiana, on 5 California sites—offshore San Diego, Point Reyes/Farallon Islands, Monterey Bay, Tanner Cortes Banks, the Santa Barbara Channel and waters around the northern Channel Islands and Santa Barbara Island—and a site at Looe Key off Florida. After each workshop was held, the feasibility of each site as a possible marine sanctuary was determined. Of the candidates listed above, four have been determined feasible and will be the subject of draft environmental statements—the Flower Garden Banks and three of the sites off California, Point Reyes/Farallon Islands, Monterey Bay, and the waters around the northern Channel Islands and Santa Barbara Island. The Tanner Cortes Banks, San Diego and the main Santa Barbara Channel have been deferred. Action on Looe Key, Florida, has been delayed pending the completion of a coral reef study by the South Atlantic and Gulf Coast Regional Fisheries Management Councils.

Consultation with Federal and State Agencies and other interested parties will occur during preparation of the DEIS's. Availability of documents and hearing dates will be announced in the **FEDERAL REGISTER**.

**R. L. CARNAHAN,**  
Acting Assistant Administrator for Administration.

[FR Doc. 78-35891 Filed 12-26-78; 8:45 am]

#### [3510-12-M]

#### GRAY'S REEF, GA.

Receipt of Nomination for Marine Sanctuary Designation

**AGENCY:** Sanctuary Programs Office/Coastal Zone Management.

**ACTION:** Receipt of Marine Sanctuary Nomination.

**SUMMARY:** Pursuant to guidelines under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532), NOAA announces receipt of a marine sanctuary nomination. Information and comments are requested on the feasibility of Gray's Reef, Georgia as a marine sanctuary.

**ADDRESS:** Send comments and/or information to: Director, Sanctuary Programs Office/CZM, NOAA, Room 280, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Nancy Foster, SPO/CZM, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, tele-

phone 202/254-7512.

The Office of Coastal Zone Management has received a nomination of Gray's Reef on the Georgia Continental Shelf for a marine sanctuary. Gray's Reef, located 18 nautical miles east of Sapelo Island, Georgia, was nominated by the Georgia Department of Natural Resources, Coastal Resources Division.

The Marine Protection, Research, and Sanctuaries Act authorizes the designation of areas of ocean waters as marine sanctuaries to preserve or restore such areas for their conservation, recreational, ecological or esthetic values, and to adopt reasonable regulations for this purpose.

All interested persons or groups may submit information and/or comments concerning possible marine sanctuary status for this site. A further notice will be published in the **FEDERAL REGISTER** when NOAA undertakes review to determine feasibility of the site and Federal agencies and the State of Georgia will be specifically notified in conformance with 15 CFR Part 922, published in the **FEDERAL REGISTER**, on page 23256, June 27, 1974.

A copy of the nomination is available for public review in Room 280, 3300 Whitehaven Street N.W., Washington, D.C. 20235 between the hours of 8:00 a.m.—4:30 p.m., Monday through Friday.

**R. L. CARNAHAN,**  
Acting Assistant Administrator for Administration.

[FR Doc. 78-35890 Filed 12-26-78; 8:45 am]

#### [3510-60-M]

National Telecommunications and Information Administration

#### FREQUENCY MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on January 10, 1979, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street, N.W., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street, N.W.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal government frequency management may be enhanced. The Council consists of 11

members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

(1) Briefing on current and planned activities of the Electromagnetic Radiation Management Advisory Council (ERMAC) by Dr. John M. Richardson, Chief Scientist, NTIA.

(2) Review and discussion of FCC Report and Order, Docket 20271 (proposals for WARC-79).

(3) FMAC study of the proposed Communications Act of 1978—Administrative Review and Progress Report.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public. Each person will be limited to 10 minutes. More extensive questions or comments should be submitted in writing before January 9th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquiries may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 298, 1325 "G" Street, N.W., Washington, D.C. 20005, telephone 202-724-3307.

Dated: December 21, 1978.

**CLOYD C. DODSON,**  
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 78-36178 Filed 12-26-78; 8:45 am]

#### [3510-26-M]

Office of the Secretary

#### METROPOLITAN STATISTICAL AREAS

Hearing on Second Proposal for Changes in Criteria

**AGENCY:** Office of Federal Statistical Policy and Standards, Department of Commerce.

**ACTION:** Notice of Hearing on Second Proposal for Changes in Criteria for Designation and Definition of Metropolitan Statistical Areas.

Notice is hereby given of a public hearing on the second proposal for revising the criteria for establishing the metropolitan statistical areas (formerly known as Standard Metropolitan Statistical Areas). This hearing is in addition to the one scheduled for Decem-

ber 15, 1978. This revised proposal has been prepared by the Federal Committee on Standard Metropolitan Statistical Areas following the period of public review and comment on the first proposal which was published in the **FEDERAL REGISTER** for June 22, 1978. The revised criteria proposal was published for public comment in Part V of the **FEDERAL REGISTER** for November 29, 1978 and in the November 1978 issue of *Statistical Reporter*. Copies are also available from the Office of Federal Statistical Policy and Standards.

The hearing will be held at 9:30 a.m. on Friday, January 26, 1979 in Room B841, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. Persons wishing to be on the agenda should contact the Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 673-7965 by January 24, 1979. Written statements may be presented in lieu of attendance at the hearing. Oral summaries of statements should be limited to 10 minutes.

**COURTENAY M. SLATER,**  
Chief Economist for the Department of Commerce.

[FR Doc. 78-35907 Filed 12-26-78; 8:45 am]

#### [3810-70-M]

#### DEPARTMENT OF DEFENSE

Office of the Secretary

#### PRIVACY ACT OF 1974

Deletion of Systems of Records

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of systems of records deletions.

**SUMMARY:** The Office of the Secretary of Defense is deleting three systems of records subject to the Privacy Act of 1974.

**DATES:** These systems of records shall be deleted as proposed without further notice.

#### FOR FURTHER INFORMATION CONTACT:

Mr. James S. Nash, Chief, Records Management Division, ODASD(A), Room 5C-315, The Pentagon, Washington, D.C. 20301, telephone: 202-695-0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records subject to the privacy Act of 1974 (5 U.S.C. 552a), Public Law 93-579, have been published in the **FEDERAL REGISTER** as follows:

FR Doc. 77-28255 (42 FR 50731) September 28, 1977

FR Doc. 78-25819 (43 FR 42375) September 20, 1978

FR Doc. 78-25819 (43 FR 58703) December 4, 1978

FR Doc. 78-34821 (43 FR 58405) December 14, 1978

**MAURICE W. ROCHE,**  
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

DECEMBER 20, 1978.

#### DELETIONS

#### DIO1

**System name:** Office of the Assistant Secretary of Defense (Intelligence) Personnel Roster (42 FR 50759, September 28, 1977).

**Reason:** The requirement for this system of records no longer exists.

#### DIO2

**System name:** Key Personnel List (42 FR 50759, September 28, 1977).

**Reason:** The requirement for this system of records no longer exists.

#### DIO3

**System name:** Staff Telephone Listing (42 FR 50759, September 28, 1977).

**Reason:** The requirement for this system of records no longer exists.

[FR Doc. 78-35943 Filed 12-26-78; 8:45 am]

#### [6740-02-M]

#### DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. G-9279, et al.]

#### AMOCO PRODUCTION CO. ET AL.

Order Directing Refunds

DECEMBER 14, 1978.

These proceedings<sup>1</sup> in Docket Nos. G-9279, et al. concern the disbursement of approximately \$7.6 million in refunds currently held by 32 producers<sup>2</sup> under the terms of various rate and certificate settlements approved by the Commission during the period from 1964 to 1969. The refunds are owed to 21 purchasers.

In the settlements, the Commission required the producers to retain the monies they had collected in excess of the determined just and reasonable rates pending determination of the disposition of such monies by the purchasers. The Commission gave the producers the option to place the

<sup>1</sup> These proceedings were commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

<sup>2</sup> TIAs listed in Appendix A, attached hereto.



refund monies into escrow accounts or to commingle the funds with their general assets. Commingled funds carry an annual interest rate, specified in the applicable settlement order, which is payable at disbursement. The interest on monies placed in escrow was limited to whatever interest was earned on such monies.

#### COMMISSION DECISION

The settlement orders governing these dockets are no longer subject to judicial review, and were not affected by subsequent rate and refund determination in area and nationwide rate proceedings.

The issue of a pipeline's equitable entitlement to its suppliers' refunds has been settled. By order of March 17, 1975,<sup>3</sup> the Commission announced that it would no longer entertain such claims of entitlement by pipelines. The order was based on the Commission's previous findings in Opinion 540<sup>4</sup> that neither the letter nor the spirit of the Natural Gas Act required

<sup>3</sup>Area Rate Proceeding, *et al.* (Hugoton-Anadarko Area), Docket No. AR64-1, *et al.*, 53 F.P.C. 821 (1975).

<sup>4</sup>Texas Eastern Transmission Corporation, Docket No. RP66-12, 39 F.P.C. 630, affirmed, *Texas Eastern Transmission Corporation v. F.P.C.*, 414 F.2d 344 (5th Cir., 1969), cert. denied, 398 U.S. 928 (1978).

the Commission to allow pipelines to prove entitlement to supplier refunds where the pipelines had prior opportunities to establish such entitlement.

The 1975 order made an exception for those pipelines whose Commission-approved rate settlements preserved a right to make such a claim. Thus any claims of entitlement to refunds by the purchasers in those proceedings must be made pursuant to a provision in the applicable settlement.

As the issues in these proceedings have been resolved, there is no further need for the producers to continue to retain these refunds. Accordingly, we shall direct the producers shown on Appendix A to refund the amounts they hold to the purchasers. Those producers who elected to commingle the refund monies with their general assets shall pay annual interest to date at the rate specified in the applicable settlement order. We shall also require the purchasers to flow-through these refunds and to file with us a proposed disposition of the remainder of the refund monies.

The Commission finds that it is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the refunds directed by this order be disbursed, and that the required reports be filed.

#### The Commission orders:

(A) Within 30 days from the date of this order, the producers listed in Appendix A, or their escrow agents, shall refund all amounts retained in the dockets listed in Appendix A, plus applicable interest as provided in the applicable settlement order to the respective purchasers. The producers, or their escrow agents, shall also submit to the Commission a report in writing on the amount of refunds made, showing separately the retained monies and the interest thereon, together with a release from the purchaser showing receipt of the monies.

(B) Each purchaser, within 30 days from the date of receipt of the refund money, shall flow-through such amounts in accordance with its various settlements and tariffs and shall submit a refund report together with appropriate releases from its customers.

(C) Each purchaser, within the same 30 day period, shall also submit a report to the Commission showing all amounts that it is retaining and the reason for such retention. If a purchaser claims entitlement to any portion of this money it should also state the reasons for such claim.

By the Commission, Commissioner Holden voted present.

LOIS D. CASHELL,  
Acting Secretary.

#### APPENDIX A.—Refund Money Retained by Producers Under Company-Wide and Other Settlements

| Producer                                | Docket Nos.             | Date of Settlement Order | Purchaser                               |
|-----------------------------------------|-------------------------|--------------------------|-----------------------------------------|
| Amoco Production Company <sup>1</sup>   | G-9279, <i>et al.</i>   | 4/13/66                  | Colorado Interstate Gas Company         |
|                                         | G-9279, <i>et al.</i>   | 4/13/66                  | Tennessee Gas Pipeline Company          |
|                                         | G-9279, <i>et al.</i>   | 4/13/66                  | Texas Eastern Transmission Corporation  |
|                                         | G-9279, <i>et al.</i>   | 4/13/66                  | United Gas Pipe Line Company            |
|                                         | G-20288                 | 12/30/65                 | Trunkline Gas Company                   |
|                                         | CI64-1154               | 12/30/65                 | Trunkline Gas Company                   |
|                                         | CI67-1339               | 8/27/69                  | Southern Natural Gas Company            |
| A O Industries Inc. <sup>2</sup>        | RI65-286                | 7/3/68                   | Tennessee Gas Pipeline Company          |
| Atlantic Richfield Company <sup>3</sup> | G-9283, <i>et al.</i>   | 10/8/64                  | Florida Gas Transmission Company        |
|                                         | G-9283, <i>et al.</i>   | 10/8/64                  | United Gas Pipe Line Company            |
| Austral Oil Company Inc.                | G-20089                 | 3/14/66                  | Trunkline Gas Company                   |
| Benedum Trees Oil Company               | G-17712, <i>et al.</i>  | 12/30/65                 | Texas Gas Transmission Corporation      |
| Champlin Petroleum Company              | RI62-233, <i>et al.</i> | 6/10/66                  | Tennessee Gas Pipeline Company          |
|                                         | RI62-233, <i>et al.</i> | 6/10/66                  | Texas Eastern Transmission Corporation  |
| Cities Service Oil Company <sup>4</sup> | G-14101, <i>et al.</i>  | 12/8/65                  | Colorado Interstate Gas Company         |
|                                         | G-14101, <i>et al.</i>  | 12/8/65                  | Columbia Gas Transmission Corporation   |
|                                         | G-14101, <i>et al.</i>  | 12/8/65                  | Natural Gas Pipeline Company of America |
|                                         | RI65-290                | 4/26/67                  | Tennessee Gas Pipeline Company          |
| Consolidated Oil & Gas Company          | G-9287, <i>et al.</i>   | 7/8/64                   | Colorado Interstate Gas Company         |
| Exxon Corporation <sup>5</sup>          | G-9287, <i>et al.</i>   | 7/8/64                   | Panhandle Eastern Pipe Line Company     |
|                                         | G-9287, <i>et al.</i>   | 7/8/64                   | Southern Natural Gas Company            |
|                                         | G-13732                 | 1/27/64                  | Texas Eastern Transmission Corporation  |
| F O Oil Corporation                     | G-17540                 | 12/30/65                 | Texas Gas Transmission Corporation      |
| Grigsby, Jack W.                        | RI61-96, <i>et al.</i>  | 8/6/64                   | United Gas Pipe Line Company            |
| Gulf Oil Corporation <sup>6</sup>       | G-10615, <i>et al.</i>  | 11/28/66                 | Lone Star Gas Company                   |
|                                         | G-10615, <i>et al.</i>  | 11/28/66                 | Michigan Wisconsin Pipe Line Company    |
|                                         | G-10615, <i>et al.</i>  | 11/28/66                 | National Fuel Supply Company            |
|                                         | G-10615, <i>et al.</i>  | 11/28/66                 | Southern Natural Gas Company            |
|                                         | G-10615, <i>et al.</i>  | 11/28/66                 | Texas Gas Transmission Corporation      |
| Hamon, Jake L.                          | RI61-408, <i>et al.</i> | 11/5/65                  | South Texas Natural Gas Gathering Co.   |
|                                         |                         |                          | United Gas Pipe Line Company            |
| Hunt, Lamar                             | G-13531, <i>et al.</i>  | 4/11/66                  | Texas Eastern Transmission Corporation  |
| Hunt, Lamar Hunt Trust Estate           | G-13531, <i>et al.</i>  | 4/11/66                  | Texas Eastern Transmission Corporation  |
| Hunt, Nelson Hunt Bunker Trust          | G-13531, <i>et al.</i>  | 4/11/66                  | Texas Eastern Transmission Corporation  |
| Hunt, Wm. Herbert Trust Estate          | G-1353, <i>et al.</i>   | 4/11/66                  | Texas Eastern Transmission Corporation  |
| Kerr McGee Corporation                  | RI63-460                | 6/3/65                   | Lone Star Gas Company                   |

#### APPENDIX A.—Refund Money Retained by Producers Under Company-Wide and Other Settlements—Continued

| Producer                                                | Docket Nos.            | Date of Settlement Order | Purchaser                               |
|---------------------------------------------------------|------------------------|--------------------------|-----------------------------------------|
| Monsanto Company                                        | G-18269, <i>et al.</i> | 12/30/66                 | Colorado Interstate Gas Company         |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | Michigan Wisconsin Pipe Line Company    |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | Northern Natural Gas Company            |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | Tennessee Gas Pipeline Company          |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | Texas Eastern Transmission Corporation  |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | Transwestern Pipeline Company           |
|                                                         | G-18269, <i>et al.</i> | 12/30/66                 | United Gas Pipe Line Company            |
| Nicklos Oil and Gas Company                             | G-20290                | 3/14/68                  | Trunkline Gas Company                   |
| Pennzoil Producing Company <sup>7</sup>                 | G-13811, <i>et al.</i> | 12/23/64                 | Frank S. Kelly, Jr.                     |
|                                                         | G-13811, <i>et al.</i> | 12/23/64                 | Natural Gas Pipeline Company of America |
|                                                         | G-13811, <i>et al.</i> | 12/23/64                 | Southern Natural Gas Company            |
|                                                         | G-13811, <i>et al.</i> | 12/23/64                 | Texas Gas Transmission Corporation      |
|                                                         | G-17820                | 12/30/65                 | Texas Eastern Transmission Corporation  |
| Phillips Petroleum Company                              | G-13531, <i>et al.</i> | 4/11/68                  | Tennessee Gas Pipeline Company          |
| Placid Oil Company                                      | RI66-349               | 7/2/68                   | Arkansas Louisiana Gas Company          |
| Salmon Corporation                                      | G-8288, <i>et al.</i>  | 10/1/64                  | El Paso Natural Gas Company             |
| Sun Oil Company                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Natural Gas Pipeline Company of America |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Northern Natural Gas Company            |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Panhandle Eastern Pipeline Company      |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Southern Natural Gas Company            |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Tennessee Gas Pipeline Company          |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | Trunkline Gas Company                   |
|                                                         | G-8288, <i>et al.</i>  | 10/1/64                  | United Gas Pipe Line Company            |
| Sunray DX Oil Co.                                       | G-6822, <i>et al.</i>  | 1/29/65                  | Colorado Interstate Gas Company         |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | El Paso Natural Gas Company             |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Michigan Wisconsin Pipe Line Company    |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | National Fuel Gas Supply Company        |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Natural Gas Pipeline Company of America |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Northern Natural Gas Company            |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Panhandle Eastern Pipe Line Company     |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | South Texas Gas Gathering Company       |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Southern Union Gathering Company        |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Tennessee Gas Pipeline Company          |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | United Gas Pipe Line Company            |
|                                                         | G-6822, <i>et al.</i>  | 1/29/65                  | Texas Gas Transmission Corporation      |
| The Superior Oil Company                                | G-17706 & G-17707      | 12/30/65                 | Colorado Interstate Gas Company         |
| Texaco Inc.                                             | G-8969, <i>et al.</i>  | 12/30/63                 | Lone Star Gas Company                   |
|                                                         | G-20451, <i>et al.</i> | 6/3/65                   | Tennessee Gas Pipeline Company          |
| Texas International Petroleum Company <sup>8</sup>      | RI65-293               | 7/25/66                  | Florida Gas Transmission Company        |
| Turnbull & Zoch Drilling Co.                            | G-17960                | 7/25/66                  |                                         |
|                                                         | RI62-543               | 7/25/66                  |                                         |
| Union Texas Petroleum Co., Division of Allied Chem. Co. | RI62-91                | 10/26/64                 | United Gas Pipe Line Company            |
| Warren Petroleum Company                                | G-20478                | 6/3/65                   | Lone Star Gas Company                   |
| Wilson, Alvin                                           | RI65-374               | 11/22/67                 | Tennessee Gas Pipeline Company          |

<sup>1</sup>Formerly Pan American Petroleum Corporation.  
<sup>2</sup>Formerly Associated Programs, Inc.

<sup>3</sup>Formerly The Atlantic Refining Company.

<sup>4</sup>Formerly Columbian Fuel Corporation.

<sup>5</sup>Formerly Humble Oil & Refining Company.

<sup>6</sup>Formerly British American Petroleum Company.

<sup>7</sup>Formerly Union Producing Company.

<sup>8</sup>Now Sun Oil Company.

<sup>9</sup>Formerly J. C. Trahan Drilling Contractor, Inc.

[FR Doc. 78-35627 Filed 12-26-78; 8:45 am]

[6450-01-M]

#### Office of Assistant Secretary for International Affairs

#### PEACEFUL USES OF ATOMIC ENERGY

##### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "Subsequent Arrangement" under the Agreement for Cooperation Between the United States and Switzerland: Atomic Energy for Civil Uses and the Additional Agreement for Cooperation Between the United States and the European Atomic Energy Community (Euratom) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves the shipment of spent enriched uranium/aluminum alloy fuels from Europe to the DOE Savannah River facility for reprocessing and storage of recovered uranium. Spent fuel will be returned from the following research reactors:

| Reactor and location  | Kgs of spent fuel |
|-----------------------|-------------------|
| RHF France            | 110               |
| BR2 Belgium           | 36.2              |
| Triton France         | 16.6              |
| Osiris and EL3 France | 176               |
| Pegase France         | 17.5              |
| Siloe France          | 132.5             |
| DR2 and DR3 Denmark   | 35                |

| Reactor and location | Kgs of spent fuel |
|----------------------|-------------------|
| Ulysee Switzerland   | 5.4               |
| Minerve France       | 10                |
| Cabri France         | 10                |
| Melusine France      | 10                |
| Saphir France        | 10                |

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the subsequent arrangement will not be inimical to the common defense and security of the United States. This arrangement for returning U.S.-origin highly enriched uranium (HEU) to the U.S. is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.



The subsequent arrangement will take effect no sooner than January 11, 1979.

Dated: December 20, 1978.

For the Department of Energy.

HAROLD D. BENIGSDORF,  
Director for Nuclear Affairs  
Internal Programs.

(FR Doc. 78-35918 Filed 12-26-78; 8:45 am)

#### [6560-01-M]

#### ENVIRONMENTAL PROTECTION AGENCY

(FRL 1030-3; OPP-180172D)

#### MISSISSIPPI AUTHORITY FOR THE CONTROL OF FIRE ANTS

Proposed Emergency Exemption for Use of Ferri-  
micide To Control Fire Ants; Extension of  
Additional Comment Period

AGENCY: Environmental Protection  
Agency, Office of Pesticide Programs  
(EPA, OPP).

ACTION: Proposed Emergency Ex-  
emptions; Extension of Additional  
Comment Period.

SUMMARY: EPA is providing a  
second additional formal opportunity  
for public comment on a proposed  
emergency exemption to permit the  
use of the pesticide Ferriamicide to  
control fire ants in Mississippi. Notice  
of the first opportunity for additional  
formal public comment was published  
in the FEDERAL REGISTER of October  
17, 1978 at page 47774.

DATE: Comments on Mississippi's ap-  
plication are due by January 3, 1979.

ADDRESS: Send comments to the  
Federal Register Section, Program  
Support Division (TS-757), Office of  
Pesticide Programs, EPA, Room 401-  
East Tower, 401 M Street, S.W., Wash-  
ington, D.C. 20460.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Timothy A. Gardner, Product  
Manager 15 (PM-15), Registration  
Division, (TS-767), Office of Pesti-  
cide Programs, EPA, Room 229-East  
Tower, telephone (202) 426-9426.

SUPPLEMENTARY INFORMATION:  
A complete statement of the back-  
ground relating to EPA's decision to  
permit additional public comment on  
the application of the Mississippi Au-  
thority for the Control of Fire Ants to  
use the pesticide Ferriamicide to con-  
trol fire ants in Mississippi appears in  
the October 17, 1978 edition of the  
FEDERAL REGISTER (43 FR 47774). As  
stated in that notice, EPA's position is  
that emergency exemptions under § 18  
of the Federal Insecticide, Fungicide

and Rodenticide Act (FIFRA) are not  
subject to the notice and comment  
provisions of 5 U.S.C. § 553. The  
Agency, however, provided an addi-  
tional formal comment period on the  
Mississippi Authority's application.

The additional comment period  
closed on October 27, 1978. Since that  
date additional information has been  
brought to the Agency's attention, and  
the Agency has decided to provide a  
second additional opportunity for  
formal comment. The additional infor-  
mation which has been received has  
been placed in the public file on this  
matter, which is located in Room 229-  
E, 401 M Street, S.W., Washington,  
D.C. The public file may be inspected  
during normal business hours.

Any additional comments which in-  
terested persons desire to submit on  
the information in the public file or  
any other relevant subject must be  
submitted by January 3, 1979.

Dated: December 21, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

(FR Doc. 78-36023 Filed 12-26-78; 8:45 am)

#### [6560-01-M]

(FRL 1028-8; OPP-66048)

#### PESTICIDE PROGRAMS

#### Intent To Cancel Registrations of Certain Pesticide Products

Pursuant to section 6(a)(1) of the  
Federal Insecticide, Fungicide, and  
Rodenticide Act (FIFRA), as amended  
in 1972, 1975, and 1978 (92 Stat. 819; 7  
U.S.C. 136), firms listed below have re-  
quested that the Environmental Pro-  
tection Agency (EPA) cancel the regis-

trations of several pesticide products.  
Such cancellation shall be effective on  
or before January 26, 1979, unless the  
registrant or an interested person with  
the concurrence of the registrant, re-  
quests that the registration be contin-  
ued in effect.

The Agency has determined that the  
distribution and sale of stocks of these  
products which were produced on or  
before the effective date of cancella-  
tion would not be inconsistent with  
the purposes of FIFRA and would not  
have an unreasonable adverse effect  
on the environment. Therefore, the  
distribution and sale of existing stocks  
of these products shall be permitted  
until the supply is exhausted or for  
one year after the effective date of  
cancellation, whichever occurs earlier,  
provided that these products shall be  
used only in a manner consistent with  
the label and labeling registered with  
EPA. Production of these products  
after the effective date of cancellation  
will be considered a violation of  
FIFRA.

Requests that the registration of  
these products be continued may be  
submitted to the Process Coordination  
Branch, Registration Division (TS-  
767), Office of Pesticide Programs,  
EPA, 401 M St., S.W., Washington,  
D.C. 20460. Any comments filed re-  
garding this notice of intended cancel-  
lation will be available for public in-  
spection in the office of the Process  
Coordination Branch from 8:30 a.m. to  
4:00 p.m. Monday through Friday.

The registrants concerned and the  
products affected by this action are  
listed below.

Dated: December 15, 1978.

JAMES M. CONLON,  
Deputy Assistant Administrator  
for Pesticide Programs.

| EPA Reg. No. | Product name                                                    | Registrant                                                                                                 |
|--------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| 407-336      | Imperial Weed & Grass Killer No. 2...                           | Imperial Chem. Co., PO Box 423,<br>Shenandoah, IA 51601.                                                   |
| 407-337      | Imperial Weed & Grass Killer No. 1...                           | Do.                                                                                                        |
| 404-172      | Erbon-4 Nonselective Herbicide                                  | Dow Chemical Co., PO Box 1706, Mid-<br>land, MI 48640.                                                     |
| 464-197      | Novon Concentrate                                               | Do.                                                                                                        |
| 464-255      | Novege Weed & Grass Killer                                      | Do.                                                                                                        |
| 464-335      | Erbon R Herbicide                                               | Do.                                                                                                        |
| 539-149      | Sears Grass & Weed Killer                                       | Sears, Roebuck & Co., Sears Tower<br>Dept. 766, Chicago, IL 60684.                                         |
| 539-254      | Sears Liquid Edger                                              | Do.                                                                                                        |
| 677-242      | Swedish Refined White Arsenic<br>Powder                         | Diamond Shamrock Corp., 1100 Super-<br>ior Ave., Cleveland, OH 44114.                                      |
| 869-61       | Green Light Liquid Edger                                        | Green Light Co., PO Box 17985, San<br>Antonio, TX 78217.                                                   |
| 869-107      | Green Light Com-Plect                                           | Do.                                                                                                        |
| 3417-18      | Pala Bleachit                                                   | Mission Chemical Co., 4690 Naples<br>St., at Morena Blvd., San Diego, CA<br>92110.                         |
| 5135-18      | UOP M-90 Algaecide                                              | Water Services Division, Universal Oil<br>Products Co., 700 South Flower St.,<br>Burbank, CA 91502.        |
| 6459-2       | Fluorakill 100                                                  | Pellers, Snider, Blankenship, Bailey<br>& Tippens, 2700 First National<br>Center, Oklahoma City, OK 73102. |
| 7393-42      | Wonder Gard Edge or Trim Grass &<br>Weed Killer Contains Erbon. | Wonder Chemical Co., PO Box 17988,<br>San Antonio, TX 78217.                                               |
| 8930-3       | Scalms #17 White Emulsion Bowl<br>Cleaner.                      | International Specialty Products,<br>Inc., 2050 North Loop West, Hous-<br>ton, TX 77018.                   |

| EPA Reg. No. | Product name                                                  | Registrant                                                     |
|--------------|---------------------------------------------------------------|----------------------------------------------------------------|
| 34782-2      | Ethylene Oxide & Carbon Dioxide<br>Sterilizing Gas Mixture.   | Big Three Industries, Inc., PO Box<br>3047, Houston, TX 77001. |
| 34782-3      | Ethylene Oxide and Dichlorodiflu-<br>oromethane Mixture.      | Do.                                                            |
| 34782-4      | Ethylene Oxide and Carbon Dioxide<br>Sterilizing Gas Mixture. | Do.                                                            |

(FR Doc. 78-35702 Filed 12-26-78; 8:45 am)

#### [6712-01-M]

#### FEDERAL COMMUNICATIONS COMMISSION

(FCC 78-870)

#### EMERGENCY BROADCAST SYSTEM

DECEMBER 21, 1978.

Closed Circuit Test Scheduled for January 9,  
1979

A test of the Emergency Broadcast  
System (EBS) has been scheduled for  
Tuesday, January 9, 1979 between  
2:03:30 and 2:09:30 P.M. Washington,  
D.C. (EST) time. Only ABC, AP Radio,  
CBS, IMN, MBS, NBC, and UPI Audio  
radio network affiliates will receive  
the Test Program for the Closed Cir-  
cuit Test. AP and UPI wire service cli-  
ents will receive activation and termi-  
nation messages of the Closed Circuit  
Test. Television networks are not par-  
ticipating in the Test.

Network affiliates will be notified of  
the test procedures via their network  
beginning four days in advance of the  
test. Test messages will also be run by  
AP and UPI radio press wire services  
for four days in advance of the test to  
insure wide dissemination of the test  
announcement and schedule.

Final evaluation of the January test  
is scheduled to be made by the end of  
February, 1979.

**THIS IS A CLOSED CIRCUIT TEST  
AND WILL NOT BE BROADCAST  
OVER THE AIR.**

Action by the Commission December  
20, 1978. Commissioners Ferris (Chair-  
man), Lee, Quello, Washburn, Fo-  
garty, White and Brown.

#### FEDERAL COMMUNICATIONS COMMISSION.

WILLIAM J. TRICARICO,  
Secretary.

(FR Doc. 78-35962 Filed 12-26-78; 8:45 am)

#### [6210-01-M]

#### FEDERAL RESERVE SYSTEM

#### NORTHWEST FINANCIAL CORP.

#### Formation of Bank Holding Company

Northwest Financial Corporation,  
Fort Worth, Texas, has applied for the  
Board's approval under section 3(a)(1)

of the Bank Holding Company Act (12  
U.S.C. 1842(a)(1)) to become a bank  
holding company by acquiring 90 per  
cent or more of the voting shares of  
Northwest Bank, Fort Worth, Texas.  
The factors that are considered in  
acting on the application are set forth  
in section 3(c) of the Act (12 U.S.C.  
1842(c)).

The application may be inspected at  
the offices of the Board of Governors  
or at the Federal Reserve Bank of  
Dallas. Any person wishing to com-  
ment on the application should submit  
views in writing to the Reserve Bank,  
to be received not later than January  
16, 1979. Any comment on an applica-  
tion that requests a hearing must in-  
clude a statement of why a written  
presentation would not suffice in lieu  
of a hearing, identifying specifically  
any questions of fact that are in dis-  
pute and summarizing the evidence  
that would be presented at a hearing.

Board of Governors of the Federal  
Reserve System, December 18, 1978.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

(FR Doc. 78-35928 Filed 12-26-78; 8:45 am)

#### [6210-01-M]

#### OLD STONE CORP.

#### Proposed Acquisition of DAC Corporation

Old Stone Corporation, Providence,  
Rhode Island, has applied, pursuant to  
section 4(c)(8) of the Bank Holding  
Company Act (12 U.S.C. 1843(c)(8))  
and section 225.4(b)(2) of the Board's  
Regulation Y (12 CFR 225.4(b)(2)), for  
permission to acquire through its  
wholly-owned subsidiary, Old Stone  
Financial Corporation, the voting  
shares of DAC Corporation, Jackson-  
ville, Florida. DAC has branch offices  
in Jacksonville, Clearwater, Daytona  
Beach, Fort Lauderdale, Lakeland,  
Melbourne, Ocala, Orlando, Pensacola,  
Tallahassee and Tampa, all in the  
State of Florida; and in Atlanta, Geor-  
gia. Notices of the application were  
published in newspapers of general cir-  
culation in the communications to be  
served between November 25 and No-  
vember 30, 1978, except for the Provi-  
dence, Rhode Island publication which

was made on December 18, 1978. Publi-  
cations were made in Jacksonville, St.  
Petersburg, Daytona Beach, Fort Lau-  
derdale, Lakeland, Coco Beach, Ocala,  
Orlando, Pensacola, Tallahassee, and  
Tampa, all in the State of Florida; in  
Atlanta, Georgia; and in Providence,  
Rhode Island.

Applicant states it will engage in the  
following activities: through DAC Cor-  
poration, in the origination for resale  
of first and second mortgages, and the  
servicing of such loans; through DAC  
Computer Services, Inc., providing  
data processing services for DAC Cor-  
poration and its affiliates, and data  
processing of financial and economic  
data for the general public; through  
American Standard Insurance Agency,  
Inc., Old Stone would act as agent for  
the sale of credit-related life, and  
credit-related health and accident in-  
surance; through The Motor Life In-  
surance Co., Old Stone would engage  
in underwriting as reinsurer of credit-  
related life and credit-related accident  
and health insurance. Old Stone Cor-  
poration proposes to engage *de novo*,  
through DAC, in consumer finance ac-  
tivities. Such activities have been spec-  
ified by the Board in section 225.4(a)  
of Regulation Y as permissible for  
bank holding companies, subject to  
Board approval of individual proposals  
in accordance with the procedures of  
section 225.4(b).

Interested persons may express their  
views on the question whether con-  
summation of the proposal can "rea-  
sonably be expected to produce bene-  
fits to the public, such as greater con-  
venience, increased competition or  
gains in efficiency, that outweigh pos-  
sible adverse effects, such as undue  
concentration of resources, decreased  
or unfair competition, conflicts of in-  
terest, or unsound banking practices."  
Any request for a hearing on this  
question should be accompanied by a  
statement summarizing the evidence  
the person requesting the hearing pro-  
poses to submit or to elicit at the hear-  
ing and a statement of the reasons  
why this matter should not be re-  
solved without a hearing.

The application may be inspected at  
the offices of the Board of Governors  
or at the Federal Reserve Bank of  
Boston.

Any views or requests for hearing  
should be submitted in writing and re-  
ceived by the Secretary, Board of Gov-  
ernors of the Federal Reserve System,  
Washington, D.C. 20551, not later  
than January 20, 1979.

Board of Governors of the Federal  
Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

(FR Doc. 78-35929 Filed 12-26-78; 8:45 am)



[4110-02-M]

DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT  
EDUCATION

## Meeting

AGENCY: National Advisory Council  
on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATE: January 25, 1979, 8:00 p.m. to 10:00 p.m., Executive Committee Meeting; January 26, 1979, 8:30 a.m. to 5:00 p.m.; January 27, 1979, 8:30 a.m. to 1:30 p.m.

ADDRESS: The Hotel Washington, 15th at Pennsylvania Ave., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376-8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes:

Program Assessment—the Council's 311(d) Project, and the HEW 1979 RFP.  
Proposed Rule Making and NOI Hearings.

## NOTICES

Supplemental Appropriations—Adult Education Act.  
National Program and Financial Report Forms.  
Community Schools and Comprehensive Community Education Act of 1978.  
NACAE Committee Reports.  
Annual Report.

Records shall be kept of all council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C., on December 21, 1978.

GARY A. EYRE,  
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 78-36038 Filed 12-26-78; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

## HEALTH MAINTENANCE ORGANIZATIONS

## Qualified October List

AGENCY: Public Health Service, HEW.

ACTION: Notice, October list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations. In addition, the service area of a previously qualified HMO has been revised and a preoperational qualification date for a certain HMO is corrected. This additional information follows the listing of this month's qualified HMOs.

FOR FURTHER INFORMATION CONTACT:

Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, Third floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the FEDERAL REGISTER. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

QUALIFIED HEALTH MAINTENANCE  
ORGANIZATIONS

Name, address, service area, and date of qualification.  
(Preoperational Qualified Health Maintenance Organization: 42 CFR 110.603(c)).

1. The Toledo Plan/dba Health Plus, (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 4346 Secor Road, Suite 105, Toledo, Ohio 43623. Service area: Lucas County, Perrysburg and Rossford in Wood County and the following zip codes in Ohio: 43601-43624, 43460, 43551, 43566, 43571, 43465, 43558, 43528, 43504, 43560, 43537, and 43542.

Date of qualification: October 31, 1978.  
(Operational Qualified Health Maintenance Organization: 42 CFR 110.603(a)).

1. Community Health Plan of Suffolk, Inc., (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), P.O. Box 778, Stony Brook, New York 11790. Service area: Towns of Babylon, Brookhaven, Huntington, Islip, and Smithtown, and the following zip codes in Eastern Nassau: 11701, 11714, 11724, 11735, 11758, 11762, 11791, 11797, 11803, and 11804.

Date of qualification: October 4, 1978.

2. COMED Inc. (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 33 Market Street, Morristown, New Jersey 07960. Service area: Counties of Morris, Passaic, Somerset, Sussex, and Warren, New Jersey. Date of qualification: October 27, 1978. (Achieved preoperational qualification on October 6, 1978.)

3. Greater Delaware Valley Health Care, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), Suite 115, Two Radnor Corporate Center, 100 Matsonford Road, Radnor, Pennsylvania 19087. Service area: Delaware County and zip codes in the following counties:

Chester County: 19301, 19312, 19333, 19341, 19342, 19345, 19353, 19355, and 19373.  
Montgomery County: 19003, 19004, 19010, 19035, 19041, 19065, 19066, 19072, 19087, and 19096.  
Philadelphia County: 19104, 19113, 19131, 19139, 19142, 19143, 19151, and 19153.

Date of qualification: October 30, 1978.  
4. Los Padres Group Health (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), P.O. Box 1767, San Luis Obispo, California 93406. Service area: San Luis Obispo County, California. Date of qualification: October 1, 1978. (Achieved preoperational qualification on September 21, 1978 (43 FR 53502).)

(Transitionally Qualified Health Maintenance Organization: 42 CFR 110.603(b))

1. Metro Health Plan, Inc., (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 2921 West Grand Boulevard, Detroit, Michigan 48202. Service area: Counties of Wayne, Oakland, and Macomb, Michigan. Date of qualification: October 17, 1978.

## REVISED SERVICE AREA

A service area listed in the annual cumulative list of qualified HMOs and published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) is revised as follows:

1. Central Essex Health Plan, P.O. Box 371, Orange, New Jersey 07051. Service area: Change from: Essex County communities of: Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, North Cald-

well, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, and West Orange.

Change to: Essex County communities of: Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, West Orange, and the following zip codes in Newark: 07102, 07103, 07104, 07105, 07106, 07107, 07108, 07109, 07110, 07111, 07112, and 07114.

Date revised service area approved—November 1, 1978. Date of qualification: Operationally qualified—January 1, 1977.

HMO PREOPERATIONAL DESIGNATION—  
CORRECTION

In the August list of qualified HMOs (43 FR 49854-6) a preoperational qualification date was inadvertently listed as August 2, 1978. It should have been August 3 for the following:

Prepaid Health Care, Inc., 1417 South Belcher Road, Clearwater, Florida 33518.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMOs should be sent to the same office.

Dated: December 18, 1978.

HOWARD R. VEIT,  
Director, Office of Health Maintenance Organizations.

[FR Doc. 35892 Filed 12-26-78; 8:45 am]

[4310-84-M]

## DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6661-A, B, C, H]

## ALASKA

## Alaska Native Claims Selection

On August 20, 1973, as amended, April 23, 1974, as amended, July 17, 1974, as amended and December 13, 1974, as amended, Eklutna, Inc. filed selection applications AA-6661-A, B, C and H, respectively, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), (hereinafter ANCSA), for the surface estate of lands located in the Eklutna area.

The village applications described lands withdrawn by Secs. 11(a)(1) and

11(a)(2) of ANCSA. Section 11(a)(2) of the act, *supra*, specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)). Section 26 of ANCSA further provides that to the extent that there is a conflict between any provisions of that act and any other Federal laws applicable to Alaska, the provisions of ANCSA shall govern. Therefore, in view of the above, the following State selection applications are hereby rejected as to the lands described below:

State selection A-061179 filed on March 19, 1964, as amended.

T. 15 N., R. 1 W., Seward Meridian, Alaska Sec. 5, lots 15 and 16;  
Sec. 6, lots 1, 3, 4, 5 and 6, SE $\frac{1}{4}$ NE $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$ , that portion of SE $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$  lying northwest-erly of PLO 3577;  
Sec. 30, NW $\frac{1}{4}$ NE $\frac{1}{4}$  NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Containing approximately 130.75 acres.

State selection A-061777 filed on October 26, 1964, as amended.

T. 14 N., R. 2 W., Seward Meridian, Alaska Sec. 2, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 11, lots 8, 43, 46, 49, 56, 58, 59, 88 and 89;  
Sec. 12, lots 5 and 6.

Containing approximately 175.37 acres.

State selection A-055409, filed under the Act of July 28, 1956, on August 22, 1961, as amended, is rejected as to the following lands. These lands were segregated from selection at the time of filing by an application for withdrawal A-054173 (43 CFR 2091.2-5) and therefore were not available for selection by the State of Alaska.

T. 16 N., R. 1 W., Seward Meridian, Alaska Sec. 23, lots 3 and 4;  
Sec. 26, NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , excluding the bed of the Alaska Railroad, one hundred (100) feet each side of the centerline.

Containing approximately 309.51 acres.

In addition, the State of Alaska amended selection A-061777 on June 16, 1972 to include additional public lands. These lands were withdrawn for Native selection by Sec. 11(a)(1) of ANCSA at that time and therefore were not available for selection by the State of Alaska. In view of this, these selections are hereby rejected as to the following described lands:

T. 14 N., R. 2 W., Seward Meridian, Alaska Sec. 11, lots 9, 22, 23, 24 and 36.  
Containing 7.98 acres.

The selection applications of Eklutna, Inc. as to the lands described below are properly filed and meet the requirements of the act and of the reg-

ulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands is considered proper for acquisition by Eklutna, Inc., and is hereby approved for conveyance pursuant to sec. 14(a) of the act:

SEWARD MERIDIAN, ALASKA, SURVEYED

T. 14 N., R. 1 W.  
Sec. 5, N $\frac{1}{2}$ SW $\frac{1}{4}$  - NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$  SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  NW $\frac{1}{4}$ .

Containing 35.00 acres.

T. 15 N., R. 1 W.  
Sec. 5, lots 15 and 16;  
Sec. 6, lots 1, 3, 4, 5 and 6, SE $\frac{1}{4}$ NE $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  SE $\frac{1}{4}$ ;  
Sec. 30, NW $\frac{1}{4}$ NE $\frac{1}{4}$  NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Containing 122.75 acres.

T. 16 N., R. 1 W.  
Sec. 23, lots 3 and 4;  
Sec. 26, NW $\frac{1}{4}$ .

Containing 230.51 acres.

T. 14 N., R. 2 W.  
Sec. 2, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 11, lots 8, 9, 22, 23, 24, 36, 43, 46, 49, 56, 58, 59, 88 and 89;  
Sec. 12, lots 5 and 6.

Containing 183.35 acres.

T. 16 N., R. 1 E.

Sec. 20, lot 3, N $\frac{1}{2}$ SW $\frac{1}{4}$  NW $\frac{1}{4}$ .

Containing 51.42 acres.

SEWARD MERIDIAN, ALASKA, UNSURVEYED

T. 15 N., R. 1 W.  
Sec. 6, that portion of SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  LYING NORTHWESTERLY OF PLO 3577.

Containing approximately 8.00 acres.

T. 16 N., R. 1 W.  
Sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$ , excluding the bed of the Alaska Railroad, one hundred (100) feet each side of the centerline.

Containing approximately 78 acres.

T. 16 N., R. 1 E.  
Sec. 13, S $\frac{1}{2}$ S $\frac{1}{2}$  and that portion of S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$  SOUTH OF THE OLD GLENN HIGHWAY RIGHT-OF-WAY;  
Sec. 20, S $\frac{1}{2}$ SW $\frac{1}{4}$  NW $\frac{1}{4}$ , EXCLUDING THE BED OF THE ALASKA RAILROAD, ONE HUNDRED (100) FEET EACH SIDE OF THE CENTERLINE.

Containing approximately 189.30 acres.

T. 16 N., R. 2 E.  
Sec. 18, SW $\frac{1}{4}$ SW $\frac{1}{4}$  and that portion of NW $\frac{1}{4}$ SW $\frac{1}{4}$  south of the old Glenn Highway right-of-way.

Containing approximately 49.6 acres.

This decision approves conveyance of approximately 947.93 acres to Eklutna, Inc. This includes approximately 306.12 acres properly selected by the State of Alaska, making a cumulative total of 3,227.68 acres which does not exceed the 69,120 acres permitted under Sec. 12(a)(1) of ANCSA.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:



1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)).

2. A right-of-way, AA-2559, for a Federal Aid Highway located in lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Sec. 2 and lots 43 and 49 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317).

3. A right-of-way, AA-9101, for a Federal Aid Highway located in lots 23, 24, 36, 46, 56, and 59 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317).

4. A right-of-way, A-062126, for a Federal Aid Highway located in lots 46, 56 and 59 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317).

5. A right-of-way, AA-8095 Parcel 41, located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 20, T. 16 N., R. 1 E., Seward Meridian, for a Federal Aid Highway. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317).

6. The right to itself, its permittees or licensees, the right to enter upon, occupy and use, any part or all of that portion lying within fifty (50) feet of the centerline of the transmission line right-of-way of Power Project No. 350, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 26, T. 16 N., R. 1 W., Seward Meridian, for the purposes set forth in and subject to the conditions and limitations of Sec. 24 of the Federal Power Act of June 10, 1928, as amended (41 Stat. 1075; 16 U.S.C. 818).

7. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616 (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN) on the easement maps in case file AA-6661-EE are reserved to the United States and subject to further regulation thereby:

a. (EIN 3 C1, D1, D9, L) An easement for an historic access trail twenty-five (25) feet in width for the Iditarod Trail as it crosses the selected lands. The alignment of this trail is within the right-of-way for the old Glenn Highway. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 50 C, D) A continuous linear easement twenty-five (25) feet in width upland of an parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

c. (EIN, 32 C) The right of the United States to enter upon the lands herein granted for cadastral, geodetic, or other survey

purposes is reserved, together with the right to do all things necessary in connection therewith.

d. (EIN 56 C4) An easement seventy-five (75) feet in width (37 $\frac{1}{2}$  feet each side of the centerline) for an existing 115KV power transmission line from the Eklutna power plant southerly to the Anchorage substation and traversing Lot 2, Sec. 2, T. 14 N., R. 2 W., Seward Meridian, S $\frac{1}{2}$ S $\frac{1}{2}$ , Sec. 13, T. 16 N., R. 1 E., Seward Meridian and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 18, T. 16 N., R. 2 E., Seward Meridian. The usage will be controlled by applicable State or Federal law or regulation.

e. (EIN 57 C4) An easement one hundred (100) feet in width for an existing road, known as the old Palmer highway, within lot 58, Sec. 11, and lots 5 and 6, Sec. 12, T. 14 N., R. 2 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

f. (EIN 58 C4) An easement one hundred fifty (150) feet in width for the existing Glenn Highway in lots 88 and 89, Sec. 11, T. 14 N., R. 2 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978 and published as final rulemaking on November 27, 1978, 43 FR 55326. Conformance will be made at a later date in accordance with the terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Eklutna, Inc. and other Cook Inlet village corporations.

The grant of lands shall be subject to:

1. Issuance of patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act (72 Stat. 339, 341, 48 U.S.C. 111719, 111720)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 703; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. Airport Lease, AA-8578 for the Birchwood Airport, located in Sec. 8, T. 15 N., R. 1 W., Seward Meridian, Alaska, issued to the State of Alaska, Division of Aviation, under the provisions of the Act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

5. Recreation and Public Purposes Lease, A-050749, containing approximately 7.98 acres, located in lots 9, 22, 23, 24 and 36, Sec. 11 of T. 14 N., R. 2 W., Seward Meridian, issued to the Anchorage School District under the provisions of the Act of June 14, 1926 (43 U.S.C. 869, 869-4);

6. A right-of-way, AA-8922, one hundred (100) feet wide, (50 feet each side of the centerline) located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 20, T. 16 N., R. 1 E., Seward Meridian, for a transmission line for the Chugach Electric Association, Inc. issued pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961);

7. A right-of-way, A-050466, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 26, T. 16 N., R. 1 W., Seward Meridian, fifty (50) feet each side of the centerline, for a transmission line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959);

8. A right-of-way, A-054419, one hundred (100) feet wide, (50 feet each side of the centerline) located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 2, T. 14 N., R. 2 W., Seward Meridian, for a transmission line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959);

9. A right-of-way, A-021429, ten (10) feet each side of the centerline, located in lots 8, 9, 43, 46 and 49 in Sec. 11, T. 14 N., R. 2 W., Seward Meridian; lot 5, Sec. 12, T. 14 N., R. 2 W., Seward Meridian, for an electrical distribution line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959);

10. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Eklutna, Inc. and other Cook Inlet village corporations. A copy of the agreement was recorded in the Anchorage Recording Office on October 25, 1977, Book 240, pages 0741-0753 and in the Palmer Recording Office on September 28, 1977, Book 149, pages 460-472. A copy of the agreement is located in the Bureau of Land Management easement case file for Eklutna, Inc., serialized AA-6661-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 55 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

There is excepted and reserved any element of ownership from the lands in the S $\frac{1}{2}$  of Sec. 13, SW $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 20, T. 16 N., R. 1 E., Seward Meridian, the SW $\frac{1}{4}$  of Sec. 18, T. 16 N., R. 2 E., Seward Meridian, Lots 88 and 89, Sec. 11, T. 14 N., R. 2 W., Seward Meridian, including but not restricted to any estate or interest in property, or permit, or other right, transferred by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (81 Stat. 441-444; 40 U.S.C. 771-792).

There are no inland water bodies considered to be navigable within the lands described.

Conveyance of the remaining entitlement to Eklutna, Inc., shall be made at a later date. When conveyance is granted to Eklutna, Inc., for the surface estate conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc., pursuant to Sec. 14(f) of ANCSA, and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a

week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2344, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1/ Any party receiving service of this decision by mail shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until January 26, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Eklutna, Inc. or Cook Inlet Region, Inc. objects to any easement which is identified herein for reservation in the conveyance which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. For further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is taken the adverse parties to be served are:

Eklutna, Inc., 840 K Street, Suite 202, Anchorage, Alaska 99501  
Cook Inlet Region, Inc., P.O. Box 4-N, Anchorage, Alaska 99509  
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501

JUDITH A. KAMMINS,  
Chief, Division of  
ANCSA Operations.

(FR Doc. 78-35919 Filed 12-26-78; 8:45 am)

[4310-84-M]

[AA-8446-A and AA-8446-B]

# ALASKA

## Native Claims Selection

DECEMBER 13, 1978.

On November 26, 1974, The Chenega Corporation for the Native village of Chenega, filed selection applications AA-8446-A and AA-8446-B, respectively, as amended, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (Supp. V, 1975)), for the surface estate of certain lands in the Chenega area, including lands within the Chugach National Forest (Proclamation, July 23, 1907, as amended).

The Native village of Chenega was not one of those listed in Sec. 11(b)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 697; 43 U.S.C. 1601, 1610(b)(1) (Supp. V, 1975)) as eligible for lands and benefits, however, Sec. 11(b)(3) of the act provides that:

Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that—

(A) Twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) The village is not of a modern and urban character, and a majority of the residents are Natives.

On August 27, 1973, the village of Chenega filed an application for a determination of its eligibility as an unlisted village pursuant to Sec. 11(b)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688, 700; 43 U.S.C. 1601, 1610(b)(3) (Supp. V, 1975)). The decision to declare Chenega an eligible village was published in the FEDERAL REGISTER on February 26, 1974 (39 FR 7468 (1974)). An appeal was filed; the Alaska Native Claims Appeal Board affirmed the eligibility of the village of Chenega on September 10, 1974, which was subsequently approved by the Secretary of the Interior on September 24, 1974. The village of Chenega thus is eligible for land and benefits under the Alaska Native Claims Settlement Act. Withdrawal of lands, pursuant to Sec. 11(a) of the Act, was effected through Public Land Order No. 5353, dated July 23, 1973 (F.R. Vol. 3, Pg. 19825).

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursu-

ant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

This decision approves approximately 65,263 acres of national forest lands for conveyance to The Chenega Corporation, for a cumulative total of approximately 65,263 acres. This does not exceed the 69,120 acres permitted under Sec. 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 66,661.21 acres, is considered proper for acquisition by The Chenega Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

## LANDS OUTSIDE CHUGACH NATIONAL FOREST

U.S. Survey No. 1728, situated on the east side of Evans Island, north shore of Evans Bay, Prince William Sound, Alaska.

Containing 3.87 acres.

U.S. Survey No. 2019, situated on Chenega Island, Prince William Sound, Alaska.

Containing 0.34 acre.

That portion of Mineral Survey No. 888, known as the Victor-West Hillside-Hillside-South Hillside and Blue Lode Claims, in Valdez Mining District, Alaska, lying within Sec. 33, T. 1 S., R. 9 E., Seward Meridian.

Containing approximately 15 acres.

## SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 2 N., R. 8 E.  
Secs. 3, 4, and 5, those portions lying outside Chugach National Forest;  
Sec. 8 (fractional), that portion lying outside Chugach National Forest;  
Sec. 9 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 2019 and 627;  
Sec. 10 (fractional), that portion lying outside Chugach National Forest;  
Sec. 16 (fractional), all.

Containing approximately 1,207 acres.

T. 1 S., R. 9 E.  
Sec. 27 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey No. 712 and Mineral Survey No. 782;  
Sec. 33 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 712 and 713 and Mineral Survey Nos. 584, 782 and 888;  
Sec. 34 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 712 and 713 and Mineral Survey Nos. 584, 782 and 970.

Containing approximately 172 acres.

Aggregating approximately 1,398.21 acres outside Chugach National Forest.

## LANDS WITHIN CHUGACH NATIONAL FOREST

### SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 2 N. R. 7 E.  
Sec. 1 (fractional), all.



Containing approximately 55 acres.

T. 3 N., R. 7 E.  
Sec. 1 (fractional), all;  
Secs. 2, 3, and 4, all;  
Secs. 9 and 10 (fractional), all;  
Secs. 11 and 12, all;  
Secs. 13 to 16 (fractional), inclusive, all;  
Secs. 22 to 25 (fractional), inclusive, all;  
Sec. 36 (fractional), all.

Containing approximately 7,303 acres.

T. 4 N., R. 7 E.  
Secs. 12 and 13, all;  
Secs. 23 and 24, all;  
Sec. 25 (fractional), all;  
Sec. 26, all;  
Secs. 33, 34 and 35, all;  
Sec. 36 (fractional), all.

Containing approximately 6,052 acres.

T. 1 N., R. 8 E.  
Sec. 11 (fractional), all;  
Secs. 14 and 15 (fractional), all;  
Secs. 22 to 27 (fractional), inclusive, all;  
Sec. 36 (fractional), all.

Containing approximately 2,490 acres.

T. 2 N., R. 8 E.  
Sec. 2 (fractional), all;  
Secs. 3 and 4, those portions lying within Chugach National Forest;  
Sec. 5 (fractional), that portion lying within Chugach National Forest;  
Secs. 6 and 7 (fractional), all;  
Sec. 8 (fractional), that portion lying within Chugach National Forest;  
Sec. 10 (fractional), that portion lying within Chugach National Forest;  
Sec. 11 (fractional), all;  
Sec. 26 (fractional), excluding ANCSA Sec. 3(e) application AA-14423;  
Secs. 30, 31, and 32 (fractional), all;  
Sec. 35 (fractional), excluding ANCSA Sec. 3(e) application AA-14423.

Containing approximately 3,419 acres.

T. 3 N., R. 8 E.  
Secs. 1 to 20 (fractional), inclusive, all;  
Secs. 21 and 22, all;  
Sec. 23 (fractional), all;  
Sec. 26 (fractional), all;  
Secs. 27, 28 and 29, all;  
Sec. 30 (fractional), all;  
Secs. 31 to 34, inclusive, all;  
Sec. 35 (fractional), all;

Containing approximately 13,108 acres.

T. 4 N., R. 8 E.  
Secs. 1 to 5 (fractional), inclusive, all;  
Sec. 7, all;  
Secs. 8 to 14 (fractional), inclusive, all;  
Secs. 15 to 19, inclusive, all;  
Sec. 20 (fractional), all;  
Secs. 21 and 22, all;  
Secs. 23 to 26 (fractional), inclusive, all;  
Sec. 27, all;  
Secs. 28 and 29 (fractional), all;  
Sec. 30, all;  
Secs. 31 to 36 (fractional), inclusive, all;

Containing approximately 16,118 acres.

T. 1 N., R. 9 E.  
Sec. 1 (fractional), excluding U.S. Survey No. 2496;  
Sec. 2 (fractional), all;  
Secs. 11 to 14 (fractional), inclusive, all;  
Sec. 19 (fractional), all;  
Sec. 24 (fractional), all;  
Secs. 30 to 33 (fractional), inclusive, all;

Containing approximately 2,133 acres.

T. 4 N., R. 9 E.

Secs. 6 and 7 (fractional), all;  
Secs. 17, 18 and 19 (fractional), all;

Containing approximately 1,417 acres.

T. 1 N., R. 10 E.  
Secs. 6 and 7 (fractional), all;  
Sec. 18 (fractional), all;  
Sec. 19 (fractional), excluding U.S. Survey No. 1639.

Containing approximately 2,104 acres.

T. 1 S., R. 8 E.  
Sec. 1 (fractional), all;  
Sec. 12 (fractional), inclusive, all;  
Sec. 13, all;  
Secs. 24 and 25 (fractional), all;  
Sec. 26 (fractional), excluding U.S. Survey No. 1728.

Containing approximately 2,070 acres.

T. 1 S., R. 9 E.

Secs. 3 to 7 (fractional), inclusive, all;  
Secs. 8 and 9, all;  
Sec. 10 (fractional), all;  
Secs. 16 and 17 (fractional), all;  
Sec. 18, all;  
Secs. 19 and 20 (fractional), all;  
Secs. 22 to 26 (fractional), inclusive, all;  
Sec. 27 (fractional), that portion lying within Chugach National Forest;  
Sec. 30 (fractional), all;  
Sec. 33 (fractional), that portion lying within Chugach National Forest;  
Sec. 34, that portion lying within Chugach National Forest, excluding Mineral Survey No. 970;  
Sec. 35, all;  
Sec. 36 (fractional), all;

Containing approximately 8,994 acres.

Aggregating approximately 65,263 acres within Chugach National Forest.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN), on the easement maps in case file AA-84460EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 1 D9) A site easement upland of the ordinary high water mark in Sec. 20, T. 4 N., R. 8 E., Seward Meridian, on the south-east shore of Eshamy Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The specific location of the site will be at a point mutually agreeable to The Chenega Corp. and the U.S. Forest Service. The site is for camping, staging and vehicle use.

b. (EIN 1b D9 L) A site easement upland of the ordinary high water mark in Sec. 7, T. 4 N., R. 8 E., Seward Meridian, on the north shore of Eshamy Lake. The site is one (1) acre in size with a twenty-five (25) foot wide easement on the bed of the lake along

the entire waterfront of the site. The site is for camping, staging and vehicle use.

c. (EIN 1c D9 L) A site easement upland of the ordinary high water mark in Sec. 12, T. 4 N., R. 7 E., Seward Meridian, on the west shore of Eshamy Lake. The site is one (1) acre in size with a twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

d. (EIN 2 L) A site easement upland of the ordinary high water mark in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, on the east shore of Eshamy Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

e. (EIN 2a D9 L) A two (2) acre fishery management easement upland of the mean high tide line in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, at the mouth of Eshamy Creek. The easement is used by the Alaska Department of Fish and Game, Commercial Fish Division, for fishery management purposes.

f. (EIN 2b D9 L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of Eshamy Creek from Eshamy Lake to Eshamy Lagoon. Purpose is to provide for public use of waters having highly significant present recreational use.

g. (EIN 2c L) An easement for a proposed access trail twenty-five (25) feet in width along the south bank of Eshamy Creek from Eshamy Lake to Eshamy Lagoon and to site EIN 3 D9 L. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

h. (EIN 3 D9 L) A one (1) acre site easement upland of the mean high tide line in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, on the south shore of Eshamy Lagoon. The site is for camping, staging and vehicle use.

i. (EIN 4d D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the outlet of a lake in Sec. 33, T. 4 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet downstream from the lake and five hundred (500) feet along the lake shore on each side of the outlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

j. (EIN 4e D9 L) A site easement upland of the ordinary high water mark at the inlet of a lake in Sec. 34, T. 4 N., R. 7 E., Seward Meridian. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

k. (EIN 4j D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the inlet of a lake in Secs. 33 and 34, T. 4 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet upstream from the lake and five hundred (500) feet along the lake shore on each side of the inlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

l. (EIN 4k D9 L) A linear site easement twenty-five (25) feet in width upland of an

parallel to the ordinary high water mark at the outlet of a lake in Sec. 3, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet downstream from the lake and five hundred (500) feet along the lake shore on each side of the outlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

m. (EIN 4l D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the inlet of a lake in Sec. 4, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet upstream from the lake and one thousand (1,000) feet along the lake shore on each side of the stream. Additionally, there is an easement on the entire bed of the stream.

n. (EIN 11 L) A one (1) acre site easement upland of the mean high tide line in Sec. 2, T. 4 N., R. 8 E., Seward Meridian, at the narrows between Eshamy Bay and Eshamy Lagoon. The site, which encompasses the Fish and Game protection cabin, is for camping, staging and vehicle use.

o. (EIN 12 L) A one (1) acre site easement upland of the mean high tide line in Sec. 18, T. 4 N., R. 9 E., Seward Meridian, at the head of the bay west of Point Nowell on the west side of Knight Island Passage. The site is for camping, staging and vehicle use.

p. (EIN 17 L) A one (1) acre site easement upland of the mean high tide line in Sec. 31, T. 4 N., R. 8 E., Seward Meridian, on the east side of Ewan Bay. The site is for camping, staging and vehicle use.

q. (EIN 20 L) An easement for an existing access trail twenty-five (25) feet in width from the mouth of Jackpot Creek in Sec. 9, T. 3 N., R. 7 E., Seward Meridian, northeasterly along the Jackpot Creek lake system to public lands in Sec. 2, T. 4 N., R. 7 E., Seward Meridian. This trail will connect easements EIN 21 L, 21a L, 41 D9 L, 4k D9 L, 4e D9 L, 4j D9 L and 4d D9 L. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

r. (EIN 21 L) A one (1) acre site easement upland of the mean high tide line in Sec. 9, T. 3 N., R. 7 E., Seward Meridian, at the mouth of Jackpot Creek. The site is for camping, staging and vehicle use.

(EIN 21a L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the mouth of Jackpot Creek in Sec. 9, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, five hundred (500) feet upstream from EIN 21 L. Additionally, there is an easement on the entire bed of the stream.

t. (EIN 27 L) A one (1) acre site easement upland of the mean high tide line in Sec. 19, T. 3 N., R. 8 E., Seward Meridian, on the west side of Chenega Island. The site is for camping, staging and vehicle use.

u. (EIN 29 L) A one (1) acre site easement upland of the mean high tide line in Sec. 23, T. 3 N., R. 8 E., Seward Meridian, on the east side of Chenega Island. The site is for camping, staging and vehicle use.

v. (EIN 31 L) A one (1) acre site easement upland of the mean high tide line in Sec. 10, T. 2 N., R. 8 E., Seward Meridian, at the head of Kake Cove. The site is for camping, staging and vehicle use.

w. (EIN 32 L) A one (1) acre site easement upland of the mean high tide line in Sec. 7, T. 2 N., R. 8 E., Seward Meridian, on the

shore of the northeast arm of the bay on the south side of Chenega Island. The site is for camping, staging and vehicle use.

x. (EIN 61 D9) A one (1) acre site easement upland of the mean high tide line in Sec. 5, T. 1 S., R. 9 E., Seward Meridian, on the shore of a small cove east of Shelter Bay. The site is for camping, staging and vehicle use.

y. (EIN 62 C) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

z. (EIN 63 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

aa. (EIN 65 E) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 1c D9 L at the west end of Eshamy Lake in Sec. 12, T. 4 N., R. 7 E., Seward Meridian, westerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978 and published as final rulemaking on November 27, 1978, 43 FR 55326. Conformance will be made at a later date in accordance with the terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Chugach Natives, Inc., The Chenega Corporation and other Chugach village corporations.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractor, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (Supp. V, 1975)), that, as to

the portion of the above-described lands located within the boundaries of a national forest (a) until December 18, 1976, the sale of any timber from such lands is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and (b) until December 18, 1983, such lands shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. The following third-party interests created and identified by the U.S. Forest Service, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (Supp. V, 1975)):

a. A special use permit issued to the Alaska Department of Fish and Game on March 2, 1960, for the purpose of maintaining a cabin for watchmen and wrier tender during the summer months which is located in SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 8 T. 4 N., R. 8 E., Seward Meridian, at the head of Eshamy Lagoon, Prince William Sound.

b. A special use permit issued to the Department of Public Safety, Division of Fish and Wildlife Protection, on March 24, 1975, for the purpose of maintaining a stream-guard cabin which is located in SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 2, T. 4 N., R. 8 E., Seward Meridian, at the entrance of Eshamy Lagoon, Prince William Sound.

c. A special use permit issued to Harold G. Hardin on April 12, 1968, for the purpose of maintaining a residence which is located in SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 26, T. 1 S., R. 8 E., Seward Meridian, on Sawmill Bay, Evans Island, Prince William Sound.

d. A special use permit issued to George L. Kritchen on May 6, 1970, for the purpose of maintaining a warehouse for use in commercial fishing activities which is located in NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 18, T. 4 N., R. 9 E., Seward Meridian, at Point Nowell, Prince William Sound.

e. A special use permit issued to Eleanor Mathews on April 15, 1977, for the purpose of maintaining an industrial cabin connected with the fishing industry which is located in SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 2, T. 4 N., R. 8 E., Seward Meridian, north and east of the entrance to Eshamy Lagoon, Prince William Sound.

f. A special use permit issued to Robert N. and Marsha G. Patrick on December 12, 1972, for the purpose of maintaining a year-long residence to be used in connection with commercial fishing which is located in NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 25, T. 1 S., R. 8 E., Seward Meridian (Lot 3, Crab Bay, Evans Island Group).

g. A special use permit issued to Ernest Lawrence and Irving C. Wedmore on January 9, 1968, for the purpose of maintaining a year-round residence (nonrecreational) and warehouse which is located in SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 26 T. 1 S., R. 8 E., Seward Meridian, on Evans Bay, Evans Island, Prince William Sound.

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said Sec.; and



6. The term and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Chugach Natives, Inc., The Chenega Corporation, and other Chugach village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for the The Chenega Corporation, serialized AA-8446-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

The Chenega Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date approximately 66,661.21 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 2,458.79 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above will be granted to Chugach Natives, Inc., when conveyance is granted to The Chenega Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in both the ANCHORAGE TIMES and THE CORDOVA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until January 26, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If The Chenega Corporation or Chugach Natives, Inc., objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not re-

served pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is taken, the adverse parties to be served are:

The Chenega Corporation  
c/o Chugach Natives, Inc.  
912 East 15th Avenue  
Anchorage, Alaska 99501  
Chugach Natives, Inc.  
912 East 15th Avenue  
Anchorage, Alaska 99501

JUDITH A. KAMMINS,  
Chief, Division  
of ANCSA Operations.

(FR Doc. 78-35920 Filed 12-26-78; 8:45 am)

#### [4310-84-M]

[Colorado 24128 h]

#### NORTHWEST PIPELINE CORP.

R/W Application for Pipeline

DECEMBER 19, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for a 4½" o.d. natural gas pipeline for the Philadelphia Creek Gathering System of approximately 0.066 miles long across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO  
COUNTY, COLORADO

T. 2 S., R. 101 W., 6th P.M.  
Section 9: NW¼NE¼, NE¼SE¼

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) To give all interested par-

ties the opportunity to comment on the application. (3) To allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Northwest Pipeline Corporation.

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, JR.,  
Leader, Craig Team,  
Branch of Adjudication.

(FR Doc. 78-35984 Filed 12-26-78; 8:45 am)

#### [4410-01-M]

#### DEPARTMENT OF JUSTICE

Antitrust Division

#### UNITED STATES v. NEW YORK COFFEE AND SUGAR EXCHANGE, INC.

Proposed Consent Judgment and Competitive Impact Statement Therein

Notice is given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of New York in *United States v. New York Coffee and Sugar Exchange, Inc.*, Civil No. 77 Civ. 5038.

The Complaint in this action alleges that the Exchange conspired since 1970 to violate Section 1 of the Sherman Act through the method by which it determined daily spot prices for raw sugar. The proposed judgment would prohibit the Exchange from determining and publishing spot prices for raw sugar except in accordance with a method specified in the judgment. Under this method, spot prices would be established in a manner consistent with the antitrust laws and not inherently anticompetitive. They would no longer be set by agreement or consensus among competing and self-interested firms. Instead, opinions would be sought from experts from various levels of the sugar industry, randomly selected each day from prepared rosters, as to prevailing cash values for raw sugar. The average of the figures obtained would then be applied to the weighted average price of transactions on the floor of the Exchange in the near term domestic and/or world futures contracts. The resulting amounts would constitute the spot prices for the day in question.

Public comment is invited within the statutory 60 day time period. Such comment and the Government's response will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: December 15, 1978.

CHARLES F. B. McALEER,  
Special Assistant for  
Judgment Negotiations.

UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF NEW YORK

*United States of America*, Plaintiff,  
v. *New York Coffee and Sugar Exchange, Inc.*, Defendant.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

#### STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court.

2. In the event the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to the plaintiff or the defendant in this or any other proceeding.

Dated: December 15, 1978.

For Plaintiff: John H. Shenefield, Assistant Attorney General, William E. Swope, Charles F. B. McAleer, Attorneys, Department of Justice, Ralph T. Giordano, Philip F. Cody, Attorneys, Department of Justice, Antitrust Division, Room 3630, 26 Federal Plaza, New York, New York 10007, Tel: (212) 264-0390.

For the Defendant: New York Coffee and Sugar Exchange, Inc., Barrett, Smith, Schapiro, Simon & Armstrong, by Edmund R. Schroeder, a member of the firm, 26 Broadway, New York, New York 10004, Tel: (212) 422-8180.

UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF NEW YORK

*United States of America*, Plaintiff, v. *New York Coffee and Sugar Exchange, Inc.*, Defendant.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

#### FINAL JUDGMENT

The Plaintiff, United States of America, having filed its Complaint on October 17, 1977; the defendant, New York Coffee and

Sugar Exchange, Inc., having appeared and filed its answer to the Complaint; and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue;

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of both parties, it is

Ordered, Adjudged and Decreed as follows:

#### I

This Court has jurisdiction over the subject matter of this action and both parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

#### II

As used in this Final Judgment:

A. "The Exchange" means the defendant, New York Coffee and Sugar Exchange, Inc., and each of its subsidiaries, affiliates and committees including the New York Coffee and Sugar Clearing Association, Inc.

B. "Spot quotation or price for raw sugar" means any figure or value which purports to reflect the actual or estimated current cash value of any amount of raw sugar anywhere in the world.

The provisions of this Final Judgment shall apply to the Exchange, its subsidiaries, affiliates, successors and assigns; to each of their respective officers, directors, managers, agents and employees; and to all other persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

#### IV

The Exchange is enjoined and restrained from directly or indirectly determining and publishing a spot quotation or price for raw sugar except in accordance with the terms and conditions set forth in Exhibit A of this Final Judgment. Nothing contained herein, however, shall prohibit the Exchange from continuing to determine and publish settlement prices in connection with the trading of sugar futures contracts on the floor of the Exchange, including delivery notices pursuant to such futures contracts. Nor is the Exchange prohibited from determining or publishing a cash value for raw cane sugar in arbitrating or otherwise resolving any dispute resulting from a default in a futures contract of the Exchange or a commercial contract in the cash market.

#### V

A. The Exchange is ordered and directed, within one hundred and eighty (180) days after the entry of this Final Judgment, to eliminate from its By-laws, Rules and Regulations any provision which is inconsistent with Section IV of this Final Judgment, including such provisions contained in paragraphs (r) and (s) of Section 16 of its By-laws, Section 45 of its By-laws, and Rule 12.26 of its Sugar Trade Rules.

B. The Exchange is ordered and directed, within thirty (30) days after the entry of this Final Judgment, to disband and eliminate its Spot Domestic Quota Sugar Quota-

tion Committee and its Spot World Sugar Quotation Committee.

#### VI

A. Within ninety (90) days after the entry of this Final Judgment, the Exchange shall mail to each of its members a complete copy of this Final Judgment.

B. Within one hundred and twenty (120) days after the entry of this Final Judgment, the Exchange shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with paragraph A of this Section VI.

#### VII

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Exchange made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the regular business hours of the Exchange to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Exchange, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Exchange and without restraint or interference from it, to interview managers, officers, agents or employees of the Exchange, any of whom may have counsel present, regarding any such matters.

B. The Exchange, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by the Exchange to the plaintiff pursuant to this Section and the exchange represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Exchange identifies such material in writing and marks each pertinent page thereof "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give the Exchange ten (10) days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Exchange is not a party.

#### VIII

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amend-



ment or modification of any of its provisions, for the enforcement of compliance therewith, and the punishment of violations thereof.

# IX

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_

United States District Judge.

## EXHIBIT A

The following sets forth the terms and conditions under which the Exchange may determine and publish spot quotations or prices for raw sugar:

### DEFINITION OF APPLICABLE TRADING PERIOD

As used in this Exhibit A, the phrase "applicable trading period" shall mean the period during the Exchange's trading day extending from 12:00 noon through the close of trading for that day.

### DEFINITION OF SPOT QUOTATIONS OR PRICES

The Exchange may determine and publish either or both of two spot quotations or prices for each trading day: one for domestic raw cane sugar and one for world raw cane sugar. The domestic spot quotation or price shall reflect the estimated price per unit, C.I.F. duty paid, of raw cane sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a period of not less than seven days nor more than sixty days after the day in question.

The world spot quotation or price shall reflect the estimated price per unit, F.O.B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from a list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question. The list of countries shall be designated by the Board of Managers of the Exchange and may be changed from time to time by the Board in order to reflect prevailing market conditions.

### ESTABLISHMENT AND USE OF INDUSTRY ROSTERS

(a) In determining the domestic and world spot quotations or prices, the Exchange shall establish two rosters of individuals knowledgeable in raw sugar trading: One roster consisting of individuals knowledgeable in domestic raw sugar trading and the other consisting of individuals knowledgeable in world raw sugar trading. The individuals on each roster shall be divided into categories representing different segments of the sugar industry and shall include non-members as well as members of the Exchange.

With respect to the domestic roster, there shall be five categories as follows:

(i) Individuals associated with firms engaged in the growth of sugar cane and/or the production of raw sugar in the United States, including beet sugar growers and/or processors;

(ii) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(iii) Individuals associated with sugar refiners located in the United States;

(iv) Individuals associated with industrial users of cane sugar located in the United States; and

(v) Individuals associated with commission houses located in the United States.

With respect to the world roster, there shall be four categories as follows:

(i) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(ii) Individuals associated with sugar refiners located in the United States;

(iii) Individuals associated with industrial users of cane sugar located in the United States; and

(iv) Individuals associated with commission houses located in the United States.

(b) The Exchange shall approach the principal firms in each of the specified categories and invite them to submit the names of candidates to be included on the rosters. The appointments to each roster shall be made by the Chairman of the Board of Managers of the Exchange with the approval of the Board. An individual may be appointed to both the domestic and world rosters. However, no more than one individual from any firm shall be appointed to any roster, provided that an alternate may be appointed to serve in the absence of another individual from the same firm.

The Exchange shall endeavor to place at least eight individuals (not including alternates) in each category of each roster and, in no event, may any category of either roster consist of less than five individuals (not including alternates).

The names of the individuals, including alternates, selected by the Exchange and the firms with which they are associated will be retained in the Exchange's records subject to the inspection, upon request, of the Antitrust Division of the United States Department of Justice.

(c) On each trading day, an employee of the Exchange shall select by lot the names of five individuals from each roster.

For the domestic roster, such employee shall select the name of one individual from each of the five categories. For the world roster, such employee shall select the name of one individual from each of the four categories and the name of one additional individual from the entire roster at large. The same individual may not be selected, on any trading day, from both the domestic and world rosters.

(d) At some time during each trading day, after 1:00 p.m. but before the commencement of the closing calls in sugar futures, the Exchange employee shall telephone each of the individuals (or their alternates) selected by lot from the domestic and world rosters.

The Exchange employee shall ask each individual selected from the domestic roster for two figures representing his expert opinions of that day's prevailing price differential between the price per unit, C.I.F. duty

As used herein, "Commission House" means any firm engaged in raw sugar futures trading, on a monetary commission basis, predominantly on behalf of its customers.

Such employee shall not be associated with any firm active at any level of the sugar industry.

paid, of raw cane sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a period of not less than seven days nor more than sixty days after the day in question and

(i) The price, per unit, of raw cane sugar under the domestic sugar futures contract for the nearest delivery month then trading on the Exchange for that contract; and

(ii) The price, per unit, of raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

The Exchange employee shall ask each individual selected from the world roster for a figure representing his expert opinion of that day's prevailing price differential between the price per unit, F.O.B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from the aforesaid list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question and the price, per unit, of raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

(e) No individual selected from either roster shall be informed of the identities or figures of the other individuals selected on that day; nor shall such individual be informed of the average, range or nature of the figures provided by the other individuals selected on the day. This information shall not be publicly disclosed by the Exchange except that the figures provided by such individuals shall be maintained by the Exchange for inspection, upon request, by the Antitrust Division of the United States Department of Justice.

(f) The nearest delivery month for the domestic and world futures contracts trading on the Exchange shall be the first one of the following delivery months that follows the day for which the spot quotation or price is being determined: March, May, July, September and (in the case of the world futures contract) October, or (in the case of the domestic futures contract) November; except that, beginning on the fifth from the last trading day for any of these delivery months, the next one of such months shall be regarded as the nearest delivery month trading on the Exchange. These delivery month designations may be changed, from time to time, by the Board of Managers of the Exchange in order to reflect prevailing market conditions.

### COMPUTATION OF ESTIMATED SPOT QUOTATION OR PRICE

As soon as practical after the close of the futures market on the day for which the spot quotations or prices are being determined, the Exchange employee shall compute the domestic and world spot quotations or prices as follows:

(a) With respect to the domestic spot quotation or price, if more than 175 lots have traded on that day, during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading (as that month is defined above), the Exchange employee

The day for which the domestic spot quotation or price is being determined. This 175 lot figure shall not include transactions against actuals or straddle transactions traded on point differentials.

shall take the figures received from the individuals selected from the domestic roster as to that day's prevailing differential above or below the price of such domestic futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract that average from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in such contract. The resulting amount shall constitute the domestic spot quotation or price for that day.

If that day's volume on the Exchange, during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading does not exceed 175 lots, then the Exchange employee shall take the figures received from the individuals selected from the domestic roster as to the differential prevailing above or below the price of the world futures sugar contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that amount to or subtract it from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading (as that month is defined above). The resulting amount shall constitute the domestic spot quotation or price for that day.

(b) With respect to the world spot quotation of price, the Exchange employee shall take the figures received from the individuals selected from the world roster as to that day's prevailing differential above or below the price of the world sugar futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract it from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading. The resulting amount shall constitute the world spot quotation or price for that day.

### PUBLICATION OF SPOT QUOTATIONS AND PRICES AND OTHER CONSIDERATIONS

(a) As soon as practical after their computation, but not later than the day on which they are computed, the Exchange shall make public the domestic and world raw sugar spot quotations or prices. In doing so, the Exchange shall preface any such quotation or price with the word "Estimated" and shall identify the day to which each quotation or price applies. At the same time, the Exchange shall also make public the weighted average prices of all of that day's transactions, during the applicable trading period, in the nearest delivery months of the domestic and world sugar futures contracts then open for trading, together with the total number of lots transacted that day, during the applicable trading period, in each such contract.

(b) The Exchange shall instruct, in writing, each member of its domestic and world roster not to, directly or indirectly, disclose or discuss his appointment or the figures which he submits to the Exchange employ-

The day for which the world spot quotation or price is being determined.

The day to which the spot quotations or prices in question apply.

ee with anyone associated with any other firm.

(c) The Exchange shall endeavor to replace a substantial number of the individuals on the domestic and world rosters every twenty-four months, and no individual may serve continuously on either roster for more than thirty-six months.

### U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

United States of America Plaintiff, v. New York Coffee and Sugar Exchange, Inc., Defendant. Competitive impact statement relating to proposed consent judgment.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

This Competitive Impact Statement is filed by the Government pursuant to the requirements of Section 2 of the Act of Congress of December 21, 1974 (15 U.S.C. 16), commonly known as the Antitrust Procedures and Penalties Act. It relates to the proposed consent judgment submitted for entry against the defendant in this civil antitrust suit.

### NATURE AND PURPOSE OF THE PROCEEDING

On October 17, 1977, the Government filed a civil antitrust suit against the New York Coffee and Sugar Exchange, Inc. ("The Exchange"), New York, New York, alleging that it had conspired to violate Section 1 of the Sherman Act through its determination and publication of daily spot prices for raw sugar. In its Complaint, the Government asked the Court to declare the Exchange's method for determining such spot prices illegal and to prohibit the Exchange from continuing, maintaining or renewing this method or any other method having a similar illegal purpose or effect.

### DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

Raw cane sugar is derived from sugar cane grown in various foreign countries and in some parts of the United States.

Sugar cane grown abroad is processed into raw sugar by foreign growers or processors who often sell it to raw sugar merchants for resale to foreign and domestic refiners. Sugar cane grown in the United States is processed into raw sugar by domestic growers or processors who often sell it directly, or through raw sugar merchants, to domestic refiners.

Domestic refiners refine the raw sugar and sell it to retailers for resale to the consuming public or to industrial users for use in the production of other products including food and beverages.

The Exchange is a non-stock membership corporation with about 300 members including officers and executives of major firms operating at various levels of the sugar industry in the United States. The Exchange generally does not buy or sell raw sugar. Rather, it operates a commodity futures exchange through which its members trade in raw sugar and other commodity futures. The Exchange is one of the largest raw sugar futures exchanges in the world.

Prior to the filing of this case, the Exchange for many years had determined daily spot prices for raw sugar sold in the domestic and world markets. These spot prices—published on each trading day of the Exchange—purported to reflect the dollar value of raw cane sugar either deliv-

ered to various ports in the United States north of Cape Hatteras (domestic spot price) or F.O.B. and stored at a port in the greater Caribbean area, including North Brazil (world spot price).

The Exchange maintained two separate committees to determine its spot prices. The world committee was composed of representatives of five competing raw sugar merchants. The domestic committee was composed of representatives of two competing domestic sugar refiners and three competing raw sugar merchants in the United States.

On every trading day, the members of each committee would directly or through their committee chairman discuss with each other by telephone the setting of the spot price for that day. After a majority consensus was achieved, the spot prices were relayed to the Exchange which then publicly announced them. Usually, the domestic and world spot prices were set solely on the basis of the collective and consensual discretion and judgment of the members of each committee.

The Exchange's spot prices had a direct and immediate effect on the actual prices of raw and refined sugar at most levels of the domestic and international sugar industry. Thus, for example, foreign and domestic growers and processors often sold raw sugar under contracts which set the purchase price by reference to the average of the spot price for a designated period. Raw sugar merchants entered similar contracts. In addition, domestic sugar refiners often independently set the prices of their refined sugar with reference to the spot prices.

In filing this action, the Government did not intend to necessarily challenge the concept of spot prices, however determined or established. Rather, the Government specifically attacked the particular method by which the Exchange set its spot prices. The Government believes, among other things, that the determination of spot prices solely on the basis of agreement and consensus among representatives of competing and self-interested firms constitutes illegal price tampering and is so inherently anticompetitive as to violate Section 1 of the Sherman Act.

On November 3, 1977, the Exchange voluntarily discontinued determining and publishing daily spot prices. It has not resumed doing so.

### EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment permits the Exchange to determine and publish spot prices for raw sugar only in accordance with a specified method which is consistent with the antitrust laws and not inherently anticompetitive.

Under this method, the Exchange would establish two rosters of individuals knowledgeable in the trading of raw sugar: one roster consisting of individuals knowledgeable in domestic sugar trading and the other of individuals knowledgeable in world sugar trading. Each roster would be divided into categories representing different segments of the sugar industry. The domestic roster would have five categories; the world roster would have four. Appointments to the rosters would be made by the Exchange after it had invited the principal firms in each category to submit the names of knowledgeable candidates. Each category would consist of



at least five individuals from different firms.

Every trading day, an impartial employee of the Exchange would select at random an individual from each category of the two rosters. Each would be separately asked for his expert opinion of that day's prevailing differential between the price of raw sugar in the cash market and the price of raw sugar under the domestic and/or world futures contract for the nearest delivery month then trading on the Exchange.

The Exchange employee would then eliminate the highest and lowest figures received from each roster, compute the average of the remaining figures, and add or subtract those averages from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the near term domestic or world futures contract.\* The resulting amounts would constitute the domestic and world spot prices for that day.

Under this method, therefore, spot prices would no longer be set by agreement or consensus among competing or self-interested firms. Nor is there any real danger that the spot prices would be intentionally set to the advantage of one or more firms and the concomitant disadvantage of competitors.

Each randomly selected roster member would, for the most part, be active at a different level of the sugar industry. Different groupings of these individuals would likely be selected each day. Each would be separately asked only for his expert opinion of that day's differential. None would be advised of any other opinion. Indeed, the Exchange would be required to instruct each roster member not to discuss his opinion with any other member. In addition, the highest and lowest opinions submitted by the randomly selected members of each roster would be discarded. Moreover, the average of the remaining opinions would be related to the average weighted price of that day's transactions, during the applicable trading period, in the near term domestic or world contract. Such transactions are voluminous and are conducted on the floor of the Exchange by open and active competitive trading. The randomly selected individuals would not know at the time they separately gave their opinions, the average near term weighted price for that day.

The Exchange would also be required to endeavor to replace a substantial number of the individuals on the domestic and world rosters every 24 months. No individual could serve continuously for more than 36 months.

The Government recognizes that spot prices set under the method described in the proposed judgment (or under any method) would not likely be a precise and exact determination of the current value of raw sugar. Rather, they would only be an estimation of prevailing cash values. Consequently, any spot prices published by the Exchange would have to be preceded by the word "estimated."

\*With respect to the world roster, an additional individual would be randomly selected from the entire roster at large.

\*The applicable trading period would include all transactions in the near term domestic or world futures contract during the period 12:00 Noon through the close of trading for that day. References would be made to the near term domestic contract only if 175 lots or more were transacted in that contract during the applicable trading period.

The Exchange would also be required to publish the weighted average prices of each day's transactions, during the applicable trading period, in the near term domestic and world futures contracts together with the total number of transactions in these contracts during such period.

Under the proposed judgment, the Exchange would be required to mail a complete copy of the final judgment to each of its members.

#### COMPETITIVE EFFECTS OF THE PROPOSED CONSENT JUDGMENT

The proposed judgment is designed to prevent a recurrence of any of the anticompetitive and illegal activities alleged in the Complaint. Any spot prices determined and published by the Exchange will be in accordance with a specified method which is consistent with the antitrust laws and not inherently anticompetitive.

#### ALTERNATIVE REMEDIES CONSIDERED BY THE GOVERNMENT

The Government considered the possibility of seeking relief which would prohibit the Exchange from determining spot prices under any method. This approach was rejected, however, since there appears to be a legitimate need in the sugar industry for some benchmark to current cash values of raw sugar.

The Government also considered the possibility of requiring the Exchange to determine its spot prices under a purely mechanical method. This, too, was rejected. Such a method would not be feasible in the context of the present sugar industry.

#### REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. Section 16(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

#### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation between the Government and the Exchange which provides that the Government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16), any person wishing to comment upon the proposed judgment may, for a 60-day period prior to the effective date, submit written comments to the United States Department of Justice, Attention Ralph T. Giordano, Chief, New York Office, Antitrust Division, 26 Federal Plaza, New York, New York 10007. Such comments and the Government's response to them will be filed with the Court and published in the FEDERAL

REGISTER. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

#### OTHER MATERIALS

There are no materials or documents which the Government considered determinative in formulating the proposed consent judgment. Therefore, none is being filed with this competitive impact statement.

Dated: December 15, 1978.

RALPH T. GIORDANO,  
PHILIP F. CODY,  
Attorneys, Department of Justice,  
Antitrust Division, 26 Federal  
Plaza, New York, New York 10007,  
Telephone: 212-264-0390.

[FR Doc. 78-35709 Filed 12-26-78; 8:45 am]

[4410-01-M]

#### "UNITED STATES" v. "WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK INC., ET AL".

#### Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of New York in *United States of America v. Wholesale Tobacco Distributors of New York Inc.*, Civil No. 77 Civ. 805. The complaint in this action alleges that beginning at least as early as 1965 the defendants and unnamed co-conspirators conspired to raise, fix, and stabilize the wholesale prices at which cigarettes were sold in New York City.

The proposed judgment would enjoin each of the defendants for a period of 25 years from entering into any agreement with any cigarette wholesaler to raise, fix, stabilize, or maintain price or other terms or conditions at which cigarettes are offered for sale; establishing or determining dates for any change in price at which cigarettes are offered for sale; or, establishing the amount or range of amount by which the price of cigarettes offered for sale shall be changed. The defendants, under the decree, are prohibited from communicating to any direct jobber of cigarettes the actual or proposed prices or changes in prices for any cigarettes offered for sale, and the actual or proposed dates for any changes in the price of cigarettes offered for sale.

The defendants will be permitted, however, to communicate such pricing information as is necessary to the bona fide purchase or sale of cigarettes between and among wholesalers, or the announcing of any price or proposed price change to any subjobber or retailer of cigarettes. Additionally,

the defendant Wholesale Tobacco Distributors of New York Inc. may assist in the enforcement of federal, state, and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps. Thus, any wholesaler may communicate pricing information to the Managing Director of the Wholesale Tobacco Distributors of New York Inc. solely for dissemination to federal, state or local law enforcement authorities. The Managing Director of the Wholesale Tobacco Distributors of New York Inc. may not, however, communicate such pricing information to any other wholesaler.

The defendant Wholesale Tobacco Distributors of New York Inc. is prohibited from having any meeting of its members at which the prices of cigarettes offered for sale are communicated in any way by its officers, directors, agents, employees or members.

The defendant Wholesale Tobacco Distributors of New York Inc. is required by the consent judgment to conform its rules, regulations, bylaws, practices and policies to the terms of the judgment and to furnish a copy of the Final Judgment to each of its members, both within ninety (90) days from the date of its entry. Then within one hundred twenty (120) days of entry, the amended bylaws, rules, and regulations will be served upon plaintiff, filed with the Court and furnished to each member.

Public comment is invited within the statutory 60 day time period. Such comment and response thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: December 18, 1978.

CHARLES F. B. McALEER,  
Special Assistant for  
Judgment Negotiations.

#### U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.; METROPOLITAN TOBACCO CO., INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOS. A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; and GLOBE WHOLESALE COMPANY, Defendants.

Civil Action No. 77 Civ. 805 (CMM)  
Filed: December 18, 1978

#### STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall not in any manner prejudice any consenting party in this or any other proceeding.

Dated: December 18, 1978.

For the Plaintiff: John H. Shenefield, Assistant Attorney General, William E. Swope, Charles F. B. McAleer, Ralph T. Giordano, Attorneys, Department of Justice, Antitrust Division, Robert A. McNew, Donald Ferguson, Attorneys, Department of Justice, Antitrust Division.

For the Defendants: Wholesale Tobacco Distributors of New York Inc.; Modern Tobacco Company, Inc.; J. Rosenberg & Sons Tobacco and Confectioners, Inc.; Sanders-Langsam Tobacco Co., Inc.; Nu Service Tobacco Co., Inc.; Globe Wholesale Company; and Jos. A. Schrager, Inc. Albert H. Blumenthal, Esq., Phillips, Nizer, Benjamin, Krim & Ballon, Metropolitan Tobacco Co., Inc., John Kirby, Esq., Mudge Rose Guthrie & Alexander, Valley Stream Distributors Co., Inc., Charles J. Rappaport, Esq., Gandin, Schotsky & Rappaport, William Bloomrosen & Son, Inc., Milton Bloomrosen, President, William Bloomrosen & Son, Inc.

#### U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.; METROPOLITAN TOBACCO CO., INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY, INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOS. A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; and GLOBE WHOLESALE COMPANY, Defendants.

Civil Action No. 77 Civ. 805 (CMM).  
Filed: December 18, 1978.

#### FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 17, 1977, and the defendants hereto, by their respective attorneys, having appeared and filed their Answers to the Complaint denying the material allegations thereof and raising certain affirmative defenses; and plaintiffs and defendants by their respective attorneys having consented to entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without adjudication of any issue of fact or law in connection herewith, and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter herein and over the parties hereto. The Complaint states a claim against the defendants upon which relief may be granted under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

A. "Person" means any individual, association, cooperative, partnership, corporation or other business or legal entity.

B. "Member" means any person who is a member of defendant Wholesale Tobacco Distributors of New York, Inc.

C. "Direct Jobber" means an entity which purchases cigarettes directly from any cigarette manufacturer, is licensed by the state to affix tax stamps to the cigarette packages, and is engaged in the sale of such cigarettes to retailers and to subjobbers who resell to retailers.

D. "Subjobber" means any person who purchases cigarettes from a direct jobber and then resells them to a retailer.

III

The provisions of this Final Judgment applicable to a defendant shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors, assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall require as a condition of the sale or other disposition of all, or substantially all, of the assets used by the defendant in the distribution of cigarettes, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon the Plaintiff its consent to be bound by this Final Judgment within thirty (30) days prior to the transfer of ownership.

V

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing directly or indirectly any agreement, understanding, plan or program with any other direct jobber or subjobber to:

(1) Raise, fix, stabilize or maintain prices or other terms or conditions at which cigarettes are offered for sale.

(2) Establish or determine dates for any change in price at which cigarettes are offered for sale.

(3) Establish the amount or range of amount by which the price of cigarettes offered for sale shall be changed.



## VI

Each defendant is enjoined and restrained from communicating directly or indirectly to any direct jobber information concerning:

(1) The actual or proposed prices or changes in price for any cigarettes offered for sale.

(2) The actual or proposed dates for any changes in the prices of cigarettes offered for sale.

Provided, however, That nothing contained in this paragraph shall restrict the communication of information necessary to the bona fide purchase or sale of cigarettes between and among direct jobbers and/or subjobbers, or the announcement by any direct jobber and/or subjobber of any price or proposed price changes to any subjobber or retailer of cigarettes; and, further provided, that for the purpose of assisting in the enforcement of Federal, State and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps, nothing contained in this paragraph shall restrict the communication of pricing information by any direct jobber or subjobber to the Managing Director of defendant Wholesale Tobacco Distributors of New York, Inc. solely for dissemination to Federal, State or local law enforcement authorities upon the condition that such information shall not be communicated by the Managing Director to any other direct jobber or subjobber.

## VII

The defendant Wholesale Tobacco Distributors of New York, Inc. is enjoined from having any meeting, conference or seminar of its members at which the prices of cigarettes offered for sale are discussed or communicated in any way by its officers, directors, agents, employees or members.

## VIII

For a period of five (5) years from the date of entry of this Final Judgment, the defendant Wholesale Tobacco Distributors of New York, Inc. is ordered to file an affidavit with plaintiff every six (6) months certifying that it has complied with the provisions of Section VII of this Final Judgment.

## IX

Each defendant direct jobber is ordered and directed to furnish within ninety (90) days from the date of this Final Judgment a copy thereof to each of its officers and directors and to each of its agents and employees having any responsibility for sales or pricing of cigarettes.

## X

Defendant Wholesale Tobacco Distributors of New York, Inc. is ordered and directed:

A. To furnish within ninety (90) days from the date of this Final Judgment a copy thereof to each of its members.

B. Within ninety (90) days from the date of entry of this Final Judgment to conform its rules, regulations, by-laws, practices and policies to the terms of this Final Judgment.

C. Within one hundred and twenty (120) days from the date of entry of this Final Judgment to serve upon the Plaintiff and file with the Court a true copy of its by-laws, rules and regulations as amended.

D. Within one hundred and twenty (120) days from the date of entry of this Final Judgment to furnish a copy of its by-laws,

rules and regulations as amended to each of its members.

## XI

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such Defendant at its principal office be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such Defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview any officers, directors, agents, partners, or employees of such Defendant, any of whom may have counsel present, regarding any such matters.

B. Each Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by any defendant to plaintiff pursuant to this Section and such defendant represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant identifies such material in writing and marks each pertinent page thereof "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then plaintiff shall give such defendant ten (10) days notice prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which such defendant is not a party.

## XII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

## XIII

This Final Judgment will expire on the Twenty-fifth Anniversary from the date of its entry and with respect to any particular provision on any earlier date specified.

## XIV

Entry of this Final Judgment is in the public interest.

Dated:

UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. WHOLESALER TOBACCO DISTRIBUTORS OF NEW YORK INC.; METROPOLITAN TOBACCO COMPANY, INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY, INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOSE A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; GLOBE WHOLESALER COMPANY, Defendants.

Civil Action No. 77 Civ. 805 (CMM)

Filed: December 18, 1978

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), hereby submits this Competitive Impact Statement relating to the proposed Consent Judgment submitted for entry in this civil antitrust proceeding.

## I

## NATURE OF THE PROCEEDINGS

The United States, on February 17, 1977, filed a civil antitrust action under Section 4 of the Sherman Act (15 U.S.C. 4) alleging that the above named defendants and unnamed co-conspirators from at least as early as 1965 had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. 1) to raise, fix, and stabilize the wholesale prices at which cigarettes were sold in New York City.

Entry by the Court of the proposed Consent Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings within the twenty-five years next ensuing, which may be needed to interpret, modify or enforce the Judgment or to punish violations of any of the provisions of the Judgment.

## II

## DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

The defendants include the largest direct jobbers of cigarettes in New York City. The combined sales of cigarettes by the defendants in New York City in 1975 exceeded \$150 million and accounted for approximately 45 percent of all cigarettes sales by direct jobbers in New York City during that year. Cigarettes are manufactured at facilities located outside the State of New York, and are purchased by the defendants and shipped regularly and continuously in interstate commerce from other states into the State of New York for sale by the defendants in New York City.

For the purpose of forming and effectuating the combination and conspiracy, the defendants and co-conspirators communicated to one another at meetings of the defendant Wholesale Tobacco Distributors of New York Inc., in telephone conversations, and

on other occasions, intention to raise the wholesale prices at which cigarettes are sold in New York City; jointly established in some cases the specific amount and in others the range by which such prices were to be increased; and jointly established a date on which such increases were to become effective. The Complaint alleges further that, as a result of the conspiracy, the wholesale prices of cigarettes in New York City have been fixed, raised, and maintained at artificial and non-competitive levels; purchasers of cigarettes have been deprived of free and open competition; and competition in the sale of cigarettes has been restrained.

## III

## EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed Consent Judgment, in the form negotiated by and among the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation among the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

## A. PROHIBITED CONDUCT

The proposed Judgment will prohibit each of the defendants from entering into any agreement with a direct jobber or subjobber of cigarettes to raise, fix, stabilize, or maintain prices or other terms or conditions at which cigarettes are offered for sale; establishing or determining dates for any change in prices at which cigarettes are offered for sale; establishing the amount or range of amount by which the price of cigarettes offered for sale shall be changed. The defendants will be enjoined from communicating to any direct jobber of cigarettes the actual or proposed prices or changes in price for any cigarettes offered for sale; and, the actual or proposed dates for any changes in the price of cigarettes offered for sale.

The defendants will be permitted, however, to communicate such information as is necessary to the bona fide purchase or sale of cigarettes between and among direct jobbers and/or subjobbers, or the announcing by any direct jobber and/or subjobber any price or proposed price changes to any subjobber or retailer of cigarettes. Additionally, the defendant Wholesale Tobacco Distributors of New York Inc. may assist in the enforcement of federal, state, and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps. Thus, any direct jobber may communicate pricing information to the Managing Director of the Wholesale Tobacco Distributors of New York Inc. solely for dissemination to federal, state or local law enforcement authorities. The Managing Director of the Wholesale Tobacco Distributors of New York Inc. may not, however, communicate such pricing information to any other direct jobber or subjobber.

The defendant Wholesale Tobacco Distributors of New York Inc. is prohibited from having any meeting of its members at which the prices of cigarettes offered for

sale are communicated in any way by its officers, directors, agents, employees or members.

The defendant Wholesale Tobacco Distributors of New York Inc. is required by the Consent Judgment to conform its rules, regulations, by-laws, practices and policies to the terms of the Judgment and to furnish a copy of the Final Judgment to each of its members, both within ninety (90) days from the date of its entry. Then within one hundred twenty (120) days of entry, the amended by-laws, rules, and regulations will be served upon plaintiff, filed with the Court and furnished to each member.

Each defendant direct jobber is required to furnish within ninety (90) days of entry a copy of the Final Judgment to each of its officers and directors as well as each of its agents and employees having any responsibility for sales or pricing of cigarettes.

## B. SCOPE OF THE PROPOSED JUDGMENT

The proposed Judgment applies to each defendant, its officers, directors, agents, employees, subsidiaries, successors, assigns and to those persons in active concert or participation with any of them who shall receive actual notice of this Final Judgment by personal service or otherwise. For a period of five (5) years from the date of entry, each defendant shall require as a condition of sale of all or substantially all of its assets used in the distribution of cigarettes, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party is required to file with the Court and serve upon plaintiff within thirty (30) days prior to the transfer of ownership its consent to be so bound.

The defendants are bound by the prohibitions of the proposed Judgment for a period of twenty-five (25) years from the date of its entry and thereafter the Judgment shall terminate and cease to be effective.

The Judgment applies to each defendant's activities wherever they may occur.

## C. EFFECT OF THE PROPOSED JUDGMENT ON COMPETITION

The relief encompassed in the proposed Consent Judgment is designed to prevent any recurrence of the conduct alleged in the Complaint. The prohibitive language of the Judgment should ensure that no future agreements or combinations between or among the defendants, between any defendant and a direct jobber, or between any defendant and a subjobber, to fix, raise, maintain or stabilize the wholesale price of cigarettes will be arranged.

The Judgment provides methods for determining defendants' compliance with the terms of the Judgment. The Department of Justice, through duly authorized representatives, may interview officers, employees and agents of each defendant regarding its compliance with the Judgment. Representatives of the Department are also given access, upon reasonable notice, to examine each defendant's records for possible violations of the Judgment and to request defendants to submit reports to the Department of Justice on matters contained in the Judgment.

It is the opinion of the Department of Justice that the proposed Consent Judgment provides fully adequate provisions to prevent continuance or recurrence of violations of the antitrust laws charged in the complaint. In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed

Judgment provides all the relief which the Department sought in its Complaint, and the additional cost of litigation necessarily involved if the issues were litigated would not result in any additional relief. Accordingly, the public interest is best benefited by the proposed consensual disposition of the action.

## IV

## ALTERNATIVE REMEDIES CONSIDERED BY THE ANTITRUST DIVISION

The defendants initially proposed a Consent Judgment which the Antitrust Division concluded would not ensure that the conspiracy charged in the Complaint would not continue or recur. The Division responded to the defendants' proposed Judgment with a counter-proposal from which the final Consent Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to the communication of price information between direct jobbers. The defendants responded to the Division's prohibition, except for bona fide sales between direct jobbers, by stating that communication of pricing information was necessary to combat bootleggers and hijackers of cigarettes as well as those who would counterfeit cigarette tax stamps. Defendants reasoned that they could not assist law enforcement agencies by providing information on unreasonably low cost retail selling prices unless they could check the legitimate direct jobbers to determine at what price they were selling to the suspected retailer.

The Division suggested that the Managing Director of defendant Wholesale Tobacco Distributors of New York Inc. could perform the investigative tasks required and still refrain from passing competitive pricing information from one direct jobber to another. The defendants agreed with the Division's proposed solution to the problem and the second proviso in paragraph VI was included in the Final Judgment.

The defendants initially demanded that the scope of the Final Judgment be limited to their activities in New York City. However, the defendants admitted that some of them, in addition to operating in New York City, operated outside of the city and in other states. Accordingly, defendants withdrew their objection to the extended coverage.

## V

## REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGATION

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered as well as costs and reasonable attorney fees. Entry of the proposed Consent Judgment in this proceeding will neither impair nor assist the bringing of any such private actions. Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)) this Consent Judgment has no prima facie effect in any lawsuits which may be pending, or hereafter brought against the defendants.



## VI

PROCEDURES AVAILABLE FOR MODIFICATION OF  
THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Ralph T. Giordano, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10007, within the sixty (60) day period provided by the Act. These comments and the Department's response to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments received will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of the proposed Judgment is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

## VII

ALTERNATIVES TO THE PROPOSED CONSENT  
JUDGMENT

The alternative to the proposed Judgment was a full trial of the issue on the merits and on relief. The Antitrust Division considers the substantive language of the Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

## VIII

## OTHER MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) were considered in formulating this proposed Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated: December 18, 1978.

Robert A. McNew, Donald Ferguson, Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10007.

[FR Doc. 78-35985 Filed 12-26-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY  
COMMISSION

## ABNORMAL OCCURRENCE EVENT

## Loss of Containment Integrity

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria in a Policy Statement published in the FEDERAL REGISTER on February 24, 1977 (42 FR 10950). Appendix A (Example II.A.2) of the Policy Statement notes that a major degradation of the primary containment boundary can be considered an abnormal occurrence. The following description of the events also includes the remedial actions taken.

**Date and Place.** On July 26, 1978, the Northeast Nuclear Energy Company (NNECO) reported to the NRC an event at Millstone Unit No. 2, a pressurized water nuclear plant located in New London County, Connecticut. On September 8, 1978, the Public Service Electric and Gas Company (PSE&G) reported a similar event at Salem Unit No. 1, a pressurized water nuclear plant located in Salem County, New Jersey.

**Nature and Probable Consequences.** The events reported at Millstone Unit No. 2 and Salem Unit No. 1 involved loss of automatic valve closure capability for certain large sized isolation valves in the containment ventilation systems while the valves were open for containment purging operations. Such loss of closure capability significantly degraded both the containment and the ECCS capability for extended time periods (hours to days) in some cases while the units were operating at power. The automatic closure feature was lost because the signals which are intended to initiate automatic closure under certain accident conditions were either bypassed or overridden and

therefore ineffective. Normal purging activities do not require the negating of any automatic closure signals.

No radiological accidents occurred during these periods and therefore these safety features were not challenged. However, if a design basis Loss of Coolant Accident (LOCA) had occurred under these conditions, the off-site consequences would have increased above those anticipated with the automatic containment isolation valve closure feature operable. In addition, as described below, the performance of the Emergency Core Cooling Systems (ECCS) may have also been degraded due to a decrease in the pressure buildup inside the containment during the accident. Specifically, two of many safety features at nuclear power plants are the containment systems and the emergency core cooling systems (see Figure 1). The containment systems include a large thick-walled building or vessel surrounding the reactor and its primary coolant system which is designed to be a leak tight enclosure to limit accidental releases of radioactivity to the environment. The emergency core cooling systems (ECCS) are designed to automatically supply water to the reactor core to mitigate the consequences of postulated accidents where the normal cooling water is lost.

Containment buildings are designed with ventilation, or purging, systems which can add fresh air and exhaust the containment atmosphere to maintain the temperature, humidity, pressure and the radioactivity levels within acceptable limits. These systems must be isolated to provide for containment integrity, when needed. For this purpose, each purge inlet and outlet pipe has two isolation valves, as do the other containment penetrations. These valves, which are permitted to be opened for purging during normal plant operation, are designed to automatically close in a very short time period, if needed for containment isolation. At many of the operating nuclear power plants, the normal containment purge systems use large pipes—ranging from two feet to more than five feet in diameter.

PRESSURIZED WATER REACTOR  
CONTAINMENT VENTILATION SYSTEMS

(SIMPLIFIED DIAGRAM)

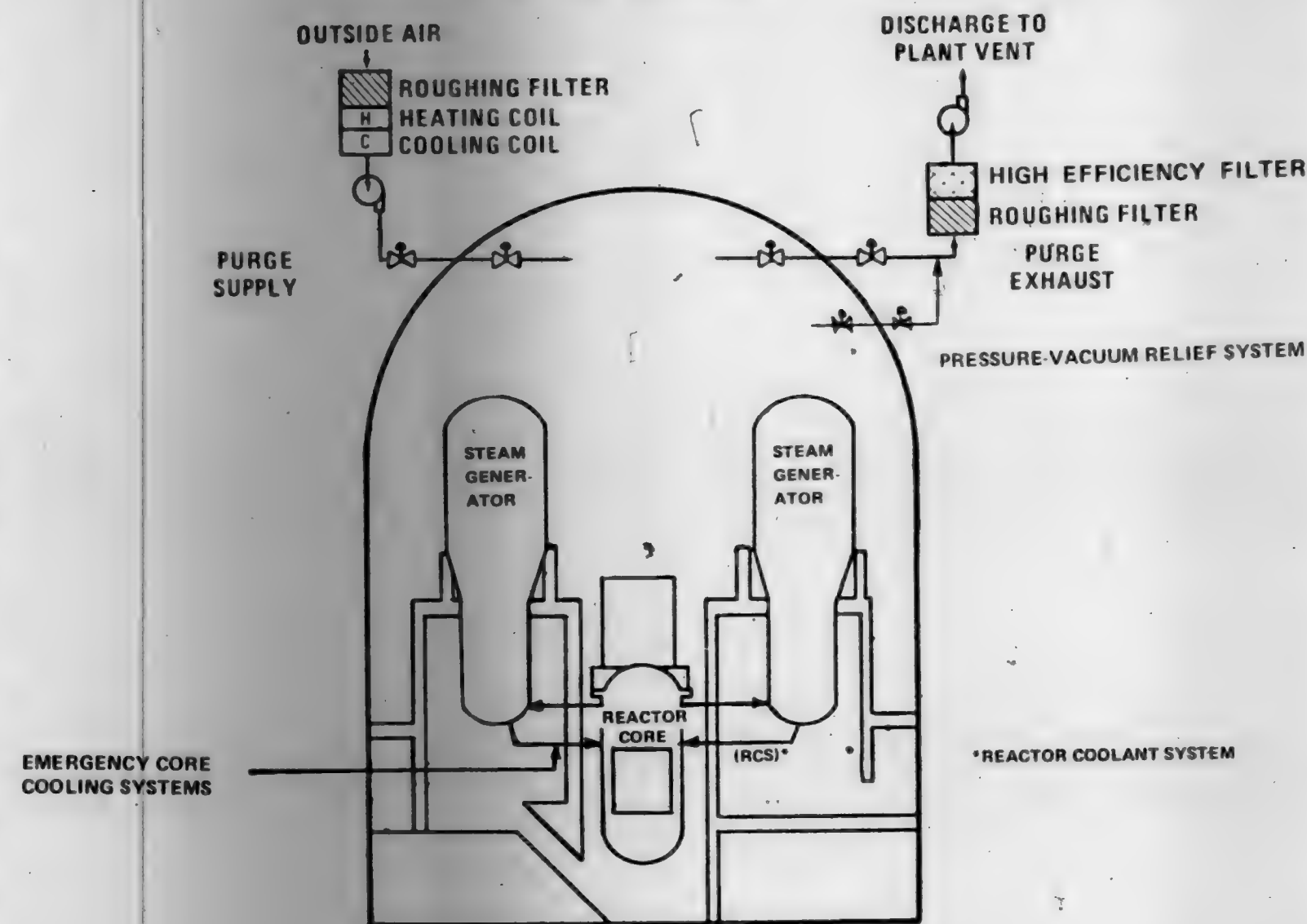


FIGURE 1



Purging does not occur continually at these plants (i.e., the containment isolation valves are normally closed). As mentioned earlier, when containment isolation valves are opened for purging, the automatic valve closure signals are normally operable. A containment isolation actuation signal, such as the containment high radiation signal, would then initiate rapid closing of the valves well within the design basis assumptions. The off-site consequences of any radioactive releases to the environs would be as "realistically" evaluated in the Environmental Impact Statement. However, in the unlikely event of a postulated design basis loss of coolant accident (LOCA) while purging with these containment valves open and their closure signals inoperative, the containment would have an unacceptably high leakage rate of radioactivity to the environment. This increased containment leakage rate would also result in a reduced containment pressure buildup during the postulated accident which, in turn, could degrade the ECCS performance. Parametric calculations indicate that the low containment pressure would result in a calculated reduction in core reflood rate and heat removal capability and would lead to higher calculated fuel cladding temperatures.

If the LOCA occurred while purging with the valve closure signals negated, although operator action may result in a decrease in the radioactive release to the environs, it is unlikely that operator action could be taken in time to close the valves to prevent degraded ECCS performance since (1) blowdown would be complete and peak containment pressure would be reached in approximately one to two minutes, and (2) there would be no indication to the operator that the valve closure signals had been bypassed. The only means the operator would have had to identify the valve status would be the valve position indication. Even if the operator were to take manual action, it is questionable whether the valves would be able to close against the postulated blowdown flow rate through the penetrations several minutes following the accident. However, if the operator were to manually close the valves within seconds following the accident, it is unlikely that the pressure buildup would be sufficient to result in blowdown forces that would affect the closure capability of the valves.

The details of the two reported events were:

**Millstone Unit No. 2 Event.** During a review of operating procedures on July 25, 1978, the licensee discovered that since May 1, 1978, intermittent containment purge operations had been conducted with the isolation signals to

the redundant containment isolation valves in the purge inlet and outlet (48 inch butterfly valves) manually overridden and inoperable. The isolation signals were manually overridden to purge the containment with a "high radiation" signal present—see further details below. (This high radiation signal was actually a low value set to initiate actions in a conservative manner.) The manual override circuitry not only defeated the "high radiation" actuation signal to close these valves, but also bypassed all other isolation signals to these valves. The operator had no indication that this bypass condition existed and, consequently, was not aware that operator action would be required to close the valves in the event of an accident.

From May 1 to July 25, 1978 (about 2,000 hours), the containment of Millstone Unit No. 2 was purged to reduce radioactivity levels, for interim periods ranging from 5 minutes to 31 hours, with purging occurring for approximately 9% (180 hours total) of the total time period. For each purge, the levels of radioactivity released to the environment were monitored and were within Technical Specification requirements. However, the regulations and specifically the plant Technical Specifications both require the containment isolation valves in lines that open directly to the containment atmosphere be capable of automatic closure during purging or other operations, or such lines must be acceptable on some other defined basis to mitigate the potential consequences of postulated design basis accidents.

**Salem Unit No. 1 Event.** On September 8, 1978, the NRC was advised that, as a matter of routine, Salem Unit No. 1 has been "venting" the containment through the containment ventilation system valves to reduce pressure. In certain instances, this venting has occurred with the containment "high particulate" radiation monitor isolation signal overridden to the purge valves (36 inch diameter valves) and pressure-vacuum relief vent valves (10 inch diameter valves). Override of the containment isolation signal was accomplished by resetting the train A and B reset buttons. Under these circumstances, six valves in the containment vent and purge systems could be opened with a high particulate isolation signal present. This override was performed after verifying the actual containment particulate radiation levels were acceptable for venting. The licensee, after further investigation of this practice, determined that the reset of the particulate alarm also bypasses the containment isolation signal to the purge valves and the vent valves and, therefore, these valves would also not have automatically closed as required in the event of a signal to initiate emergency core cooling.

To manually override a safety actuation signal, the operator cycles the valve control switch to the closed position and then to the open position. This action energizes a relay which overrides the safety signal and allows manual operation independent of any safety actuation signal. This circuitry is designed in this manner to permit reopening of certain valves after an accident to allow manual operation of safety equipment.

These buttons reset the logic circuits (train A and train B) associated with containment isolation.

The licensee had modified its procedures to preclude venting of the containment through the purge valves when the containment "high particulate" alarm exists.

**Cause or Causes.** The events resulted from procedural inadequacies and design deficiencies. While the containment atmospheres were properly sampled and the purging (venting) discharges that actually occurred were within regulatory requirements, the procedures did not adequately address the operability of the isolation valves and the limitations on negating the closure signals. The requirements for having the valves capable of closing automatically were not discussed, nor were the related Technical Specifications referenced, in the procedures. Although not a requirement, to do so is good practice. Design deficiencies contributed to the event in that (1) bypassing one safety signal also bypassed other safety signals, and (2) the use of this bypass was not annunciated in the control room.

#### ACTION TAKEN TO PREVENT RECURRENCE LICENSEES

**Northeast Nuclear Energy Company (NNECO).** The immediate corrective action taken by NNECO, at Millstone Unit No. 2, was to close, deenergize and administratively remove the containment purge valves from service (tag out). Future NNECO actions include the development of procedure revisions and submission of proposed changes to the Millstone Unit No. 2 Technical Specifications. These changes would allow somewhat higher containment radiation monitor setpoints, still based on remaining well within allowable effluent release limits, which will permit containment purging over a wide range of normal containment conditions without overriding the "high radiation" signal or any other signal.

**Public Service Electric and Gas Company (PSE&G).** The immediate corrective action taken by PSE&G at Salem Unit No. 1, was to stop venting when override of the valve closure signals is involved. In addition, PSE&G initiated design changes such that the isolation valves will be closed automatically by a signal actuating the

emergency core cooling systems even if the containment radiation monitor alarms are overridden.

**NRC.** The NRC has previously reviewed the practice of purging containment during operation and, in 1975, revised its licensing program for new plants by restricting purging during operation.

In a related instance in May, 1976, Commonwealth Edison Company reported that they had stopped the practice of purging containment during operation at Zion Stations having determined that a safety analysis had not been performed to assess the effect of purge valve closure time upon ECCS performance. Preliminary calculations by Commonwealth Edison Company indicated that containment pressure would fall below that assumed for the design basis loss of coolant accident and that the existing analysis therefore not conservative. The NRC review of this event concluded that the effect of purging upon ECCS performance was generic to many operating reactors. However, the significance of this event for public health and safety was determined to be minor when evaluated on more realistic bases, i.e., automatic valve closure times on the order of 5 to 10 seconds, with peak pressure in containment being reached on the order of 1-2 minutes. This item was therefore given relatively low priority for resolution.

Now based on an assessment of these events, the NRC believes that tighter controls are warranted on purging and venting operations to assure containment integrity at these two and other nuclear power plants.

In addition to reviewing the licensee's corrective actions for these events the NRC staff is reviewing the generic implications for other facilities.

All operating reactor licensees, whose Technical Specifications do not prohibit purging during operation, are being requested to commit to stop purging during operation or to provide a basis why purging during operation should be permitted. The staff basis for allowing limited purging through fast closing valves during operation will be a demonstration of the capability of the valves to close under postulated accident conditions and a Technical Specification limitation of 90 hours per year for purging during operation. The staff basis for allowing unlimited purging through fast closing valves during operation will require: (1) demonstration of the capability of the valves to close under postulated accident conditions, (2) an assessment demonstrating the acceptability of purging during operation upon emergency core cooling system performance, (3) containment purge and isolation instrumentation, and control cir-

cuit designs which conform to the appropriate safety standards (IEEE Standard 279-1971), and (4) an assessment demonstrating acceptability of the radiological consequences of the design basis loss of coolant accident initiated during purge operations.

Also, all licensees are being requested to review all safety actuation signal circuit designs which incorporate a manual override, or negating, feature to insure (1) that override of a single safety actuation signal does not bypass other safety actuation signals, and (2) that the use of the manual override feature is appropriately enunciated in the control room. Licensees will be required to report the results of their review and their corrective actions for any non-conforming circuits.

In addition, all licensees are being advised of the necessity for proper management controls for the use of manual override of safety signals during non-emergency conditions. NRC will, through their inspection program, assure that licensees have initiated appropriate follow-up action.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,  
Secretary of the Commission.

Dated at Washington, D.C. this 20th day of December, 1978.

(FR Doc. 78-35949 Filed 12-26-78; 8:45 am)

[7590-01-M]

#### INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

##### Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretar-

iat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-05, "Radiological Protection During Operation of Nuclear Power Plants," has been developed. The Working Group, consisting of Mr. E. Hladky, Czechoslovak Socialist Republic; Mr. P. Jeanson, France and Mr. Lionel Lewis (Duke Power Company), United States of America, developed the initial draft of this Safety Guide from an IAEA collation during a meeting on May 16-27, 1977. The initial Working Group draft was modified by the IAEA Technical Review Committee in subsequent meetings, and we are soliciting comments on the modified November 28, 1978 draft. Comments on this draft received by February 9, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Md. this 18th day of December 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,  
Acting Director,  
Office of Standards Development.  
(FR Doc. 78-35946 Filed 12-26-78; 8:45 am)

[7590-01-M]

(Dockets Nos. 50-245 and 50-336)

#### NORTHEAST NUCLEAR ENERGY CO., ET AL Issuance of Amendments To Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 56 and 45 to Provisional Operating License No. DPR-21 and Facility Operating License No. DPR-65, respectively, to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Units Nos. 1 and 2, located in the Town of Waterford, Connecticut. The amendments are effective as of their date of issuance.



The amendments revise the Appendix A Technical Specifications for Unit No. 2 only by:

- changing the refueling water storage tank sump recirculation actuation setpoint;
- revising the engineered safety features response times;
- modifying the incore detector operability requirement to be more definitive and to remove unnecessary requirements;
- correcting the required number of redundant meteorological monitoring instruments;
- modifying the action requirements for operability of the control room chlorine detectors;
- defining "immediate" in certain ACTION statements and revising other specified time intervals;
- correcting the pressure at which the safety injection tank isolation valves must be operable;
- increasing the amount of TSP required to neutralize the containment sump;
- changing the wording to indicate that specific doorways in the enclosure building have only one door;
- requiring verification of proper operation of the diesel generator under simulated emergency conditions; and
- adding surveillance requirements for ECCS throttled valves.

The amendments revise the Appendix A Technical Specifications for both Units 1 and 2 by:

- changing administrative controls to reflect current organizational structure; and
- providing greater flexibility regarding entry into high radiation areas.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated July 21, October 4, 12, and 18, November 14, 16, and 21,

and December 13, and 15, 1977, and January 12 and 24, February 23, and March 20 and 21, 1978, (2) Amendments Nos. 56 and 45 to Licenses Nos. DPR-21 and DPR-65, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 8th day of December 1978.

For The Nuclear Regulatory Commission.

ROBERT W. REID,  
Chief, Operating Reactors  
Branch No. 4 Division of Operating Reactors.

(FR Doc. 78-35947 Filed 12-26-78; 8:45 am)

#### [7590-01-M]

NUCLEAR ENGINEERING CO., INC.

(Docket No. 27-39)

In the matter of NUCLEAR ENGINEERING COMPANY, INC., (Shelfield, Illinois Low-Level Radioactive Waste Disposal Site).

It is ordered that oral argument be scheduled in this proceeding commencing at 12:30 p.m. on Thursday, January 4, 1979. This argument will be held at the Public Hearing Room, 5th Floor, East-West Towers, 4350 East-West Highway, Bethesda, Maryland 20014.

The matters to which argument is to be directed are both parts of Applicant's motion to compel filing of a draft environmental impact statement. Also to be discussed is the scheduling of a prehearing conference.

The time allotted to the parties is forty-five (45) minutes each to Applicant's and NRC Staff's attorneys, and thirty (30) minutes each to the intervenors' attorneys.

Dated at Bethesda, Maryland This 19th day of December 1978.

For The Atomic Safety And Licensing Board.

ANDREW C. GOODHOPE,  
Chairman.

(FR Doc. 78-35942 Filed 12-20-78; 8:45 am)

#### [7590-01-M]

(Docket No. 50-278)

PHILADELPHIA ELECTRIC CO. ET AL.

Issuance of Amendment to Facility Operating License

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. DPR-56 issued to Philadelphia Electric Company, Public Service Electric Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Unit No. 3 (the facility) located in Peach Bottom, York County, Pennsylvania. The amendment is effective as of its date of issuance.

The amendment consists of changes in the Technical Specifications to revise, on an interim basis, the maximum allowable time permitted for the Reactor Core Isolation Cooling System (RCIC) to be out-of-service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 13, 1978, (2) Amendment No. 49 to License No. DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 1717 H Street, N.W., Washington, D. C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For The Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,  
Chief, Operating Reactors  
Branch No. 3, Division of Operating Reactors.

(FR Doc. 78-35948 Filed 12-26-78; 8:45 am)

#### [7590-01-M]

(Docket Nos. 50-443A and 50-444A)

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, ET AL.

Receipt of Attorney General's Advice and Time For Filing Of Petitions to Intervene On Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following additional advice from the Attorney General of the United States, dated December 19, 1978, with respect to a construction permit application for Seabrook Nuclear Power Station, Units No. 1 and No. 2:

You have requested our further advice pursuant to Section 105c of the Atomic Energy Act of 1954, as amended, in regard to the above-captioned application. The Department previously rendered advice respecting this application on December 4, 1973 and November 13, 1975. We understand that the Massachusetts Municipal Wholesale Electric Company (MMWEC) and Maine Public Service Company propose to participate with the Public Service Company of New Hampshire and several other licensees in the Seabrook Nuclear Power Station, Units No. 1 and No. 2. Under the participation plan, MMWEC would obtain a 139.99 megawatt share (or a 5.86238% ownership interest) of the facility, while Maine Public Service Company would acquire a 34.82 megawatt share (or a 1.50009% ownership interest). Both of these applicants underwent successful antitrust review by the Department as reported in my letter of August 27, 1977, in connection with the Millstone Nuclear Power Station, Unit No. 3, NRC Docket No. 50-423A. MMWEC also underwent affirmative antitrust review, as communicated in my letter of April 20, 1978, in connection with the Pilgrim Nuclear Generating Station, Unit No. 2, NRC Docket 50-471A.

Our review of the information submitted for the proposed additional participants, as well as other relevant information, has disclosed no basis upon which to change our previous conclusion that no antitrust hearing will be required regarding this nuclear facility.

Any person whose interest may be affected by this proceeding may, pursuant to section 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by January 26, 1979, either (1) by delivery

to the NRC Docketing and Service Branch at 1717 H Street, NW, Washington, DC or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

For the Nuclear Regulatory Commission.

JEROME SALTZMAN,  
Chief, Antitrust and Indemnity  
Group, Office of Nuclear Reactor Regulation.

(FR Doc. 78-35941 Filed 12-26-78; 8:45 am)

#### [7590-01-M]

(Docket No. 50-312)

SACRAMENTO MUNICIPAL UTILITY DISTRICT;  
RANCHO SECO NUCLEAR GENERATING STATION

EXEMPTION

#### I.

The Sacramento Municipal Utility District (the licensee), is the holder of Facility Operating License No. DPR-54 which authorizes the operation of the nuclear power reactor known as Rancho Seco Nuclear Generating Station (the facility) at steady state reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a Babcock and Wilcox Company (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Sacramento County, California.

#### II.

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 8, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR Part 50.46 and Appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the Commission that it had determined that in the event of a small break Loss of Coolant Accident

(LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200°F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Rancho Seco Nuclear Generating Station has an ECCS configuration which consists of two HPI trains. Each train has an HPI pump and the train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. (There is also a third HPI pump installed.) The two parallel HPI trains are connected but are kept isolated by manual valves (known as the crossover valves) that are normally closed. Upon receiving a safety injection signal, the HPI pumps are started and valves in the four injection lines are opened. Assuming loss of offsite power and the worst single failure (failure of diesel to start) only one HPI pump would be available and two of the four injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about half of the output of one high pressure pump) could flow out the break. Therefore, for the worst combination of break location and single failure, only one-half of the flow rate of a single high pressure ECCS pump would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

Following discovery of this problem, B&W stated that they had analyzed a spectrum of small breaks in the pump discharge line and had determined that to meet the limits of 10 CFR 50.46, operator action was required to open the two manually operated crossover valves and to manually align the two motor driven isolation valves which had failed to open. This would allow the flow from the one HPI pump to feed all four reactor coolant legs. B&W assumed that 30% of the flow would be lost through the break and 70% would refill the core. By letters dated April 14 and 21, 1978, supplemented by discussions with the staff, the licensee committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limit-



ing single failure, manual action would be taken to begin opening these valves within five minutes and have them fully opened and an adequate flow split obtained within 10 minutes after initiation of the event. To facilitate this operation, the licensee committed to maintain one of the series-connected, manually operated crossover valves normally open. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We therefore concluded that the modeling of operator action used in the analyses was a reasonable approximation of the operator action that actually will be taken, provided specific procedures were prepared and followed to assure such action.

By letter dated July 18, 1978, B&W submitted a summary of analyses of this event. This summary described the methods used and the results obtained for small breaks in the pump discharge piping for a reactor power of 2772 Mwt, which is the rated power level of Rancho Seco. The results provided in this summary were obtained using the B&W ECCS Evaluation Model with two modifications. These modifications, which involve use of a two node inner vessel simulation and phase distributional multipliers for bubble rise in all control volumes within the reactor vessel, were described in a B&W letter to the staff, dated May 26, 1978, and have been reviewed and approved by the staff.

By letter dated July 18, 1978, the licensee stated that he had reviewed the B&W submittal of July 18, 1978, and had found the conclusions acceptable and applicable to Rancho Seco. Based on this review, the licensee requested authorization to operate Rancho Seco at 100% full power (2772 Mwt).<sup>\*</sup> In a submittal dated July 7, 1978, the licensee also confirmed that procedures for operator action consistent with the assumptions of the B&W analyses had been implemented, that drills had been conducted which verified that the required operations could readily be completed in less time than assumed in the B&W analyses and that all five operating shifts had been trained in the procedures. Representatives of the Commission's regional office state that they have verified the licensee's implementation of the procedures and have inspected the licensee's training records to verify that training in the procedures was conducted. Based on the above, we concluded that the procedures implemented by the licensee relative to operator action in the event of a small break

<sup>\*</sup> In a previous licensing action related to this matter the maximum power level of Rancho Seco had been limited to 2080 Mwt by the Commission's Order for Modification of License dated April 26, 1978.

are acceptable. In addition, in his letter dated April 21, 1978, the licensee committed to submit by July 21, 1978, a proposal for any long-term modification (to eliminate the need for prompt operator action) considered appropriate.

Regarding the licensee's request for authorization to operate the facility at full power (2772 Mwt), we reviewed the B&W submittal of July 18, 1978, which presented the results of analyses performed for reactor coolant pump discharge line break sizes 0.15, 0.10, 0.085, 0.07, 0.055 and 0.04 ft<sup>2</sup> at a reactor power level of 2772 Mwt. Based on these results, B&W stated that with operator action consistent with that modeled in the analyses, a 0.07 ft<sup>2</sup> discharge line break is the most limiting case. In this case, core uncover occurs for about 410 seconds and the conservatively calculated peak clad temperature is approximately 1092°F. This temperature is well below the limit specified in 10 CFR 50.46(b).

Based on our review of these analyses, we found that the calculations supported the conclusion that 0.07 ft<sup>2</sup> discharge line break was the most limiting case. The analyses submitted used a simplified input to the FOAM code for the distribution of steam sources which the licensee described as conservative. However, these analyses did not provide adequate justification that this approach was clearly conservative. Accordingly, we could not conclude that operation of Rancho Seco at 2772 Mwt would be fully in conformance with 10 CFR 50.46. On the other hand, for operation of this facility at power levels up to 2772 Mwt, the ECCS performance calculations for limiting small break did indicate that this break had a very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b) if operator action consistent with that assumed in the analyses was properly taken. Therefore, because of this very substantial margin on peak clad temperature, the NRC staff concluded that operation of Rancho Seco at power levels of up to 2772 Mwt in accordance with the operating procedures previously identified would not endanger life or property or the common defense and security. The licensee conditions previously imposed by Order of April 26, 1978, were therefore modified to: (1) require submission of a reevaluation of ECCS cooling performance wholly in conformance with 10 CFR 50.46, except for the credit for completion of operator action within 10 minutes after initiation of the event; (2) limit the maximum steady state reactor core power level to 2772 Mwt; (3) require operation in accordance with procedures described in the licensee's letters of April 14, 1978, as supplemented by let-

ters dated April 21 and July 7, 1978 (except that the maximum time for completion of operator action was 10 minutes); and (4) require submission as soon as possible of a description and safety evaluation of a proposed plant modification which would eliminate reliance on prompt operator action. These conditions were added to the Rancho Seco license by Order for modification of License dated July 21, 1978. Since that time, B&W has provided in their letter of August 11, 1978 additional information concerning the simplified input used in the FOAM code portion of the ECCS performance analyses submitted July 18, 1978. The staff has reviewed this additional information and on the basis of its review has concluded that the small break LOCA analyses which used this simplified FOAM code input method are acceptably conservative and in conformance with the performance criteria of 10 CFR 50.46 and Appendix K to Part 50. As noted previously, however, these analyses assume completion of the local operator action as described in the licensee's letters of April 14, 21 and July 7, 1978, within ten minutes following the initiation of the event.

The original concern in this matter derived from an unexpected but nevertheless inadequate assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, continued reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and should be remedied as promptly as possible. To this extent, the original defect still remains until modifications are made to eliminate the reliance on prompt operator actions. To remedy this defect the licensee, in accordance with license Condition 4 of the present Order, submitted on July 20, 1978, a description and safety evaluation of a proposed plant modification which would eliminate reliance on the prompt operator action noted above. Additional information concerning the proposed modification has been supplied by the licensee's letters of October 9, November 22 and December 4, 1978. In addition, in his letters of November 22 and December 4, 1978, the licensee committed to complete implementation of this proposed modification prior to Rancho Seco operation in Cycle 4. Justification for this implementation schedule was provided in the licensee's letter of December 4, 1978.

The licensee, in his letter of November 22, 1978, also requested an exemption from the provisions of 10 CFR 50.46 until such modifications were implemented.

With respect to this request for an exemption, we note that the conclusions drawn in our Order of July 21, 1978 remain valid and have been further supported by our subsequent conclusions regarding the acceptability of the simplified input used in the FOAM code. Accordingly, we conclude that operation of Rancho Seco at power levels up to 2772 Mwt in accordance with the referenced procedures for operator action until modifications are completed to achieve full compliance with 10 CFR 50.46 will not endanger life or property or the common defense and security.

We have reviewed the modification proposed by the licensee to eliminate reliance on prompt operator action. This modification consists of replacement of the AC motors presently installed on the valve operators for the four high pressure injection valves and the reactor coolant normal makeup valve, with similarly qualified DC motors. Because Rancho Seco has four Class 1 battery banks, the proposed change allows the injection and makeup valve operators to be powered from reliable power sources different from those used for the high pressure injection pumps. Accordingly, a single failure would not disable both a pump and its associated injection valves. The licensee has presented a single failure analysis which demonstrates that in the presence of a small break LOCA, no single failure combined with a loss of offsite power would prevent supply of an adequate total flow of cooling water. The licensee will also provide modifications which will limit the degree of opening of the injection valves upon receipt of a high pressure injection signal. This is being done to assure a proper flow split between the four injection lines and to prevent pump runoff. The licensee has committed to perform tests to verify that these criteria are met. The licensee has also provided a battery loading analysis which adequately demonstrates the ability of the battery banks to accommodate this addition load. Therefore, based on our review of the licensee's submittal we conclude that upon installation of the modification, as proposed, and upon completion of testing to verify attainment of the flow split assumed in the B&W analy-

sis of July 18, 1978, the emergency core cooling system will fully conform to the requirements of 10 CFR 50.46.

Thus, while the ECCS for Rancho Seco does not fully comply with our requirements, appropriate actions have been taken to remedy the defect in a timely manner, and to mitigate the consequences of a small break LOCA, should such an accident occur prior to implementation of acceptance modifications. As a condition of granting an exemption, adherence to prescribed operator actions and implementation of the proposed modifications prior to operation in Cycle 4 are being made conditions of the facility operating license. These conditions will remain in force only for the interval of time about one year until the proposed modifications of the ECCS are completed. The public interest is served by issuing this exemption for Rancho Seco in that in the absence of an exemption, shutdown of the facility would be required. Loss of this block of generating capacity could adversely affect electric system reliability and thus possibly adversely affect the public.

### III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Sacramento City-County Library, Sacramento, California.

- (1) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch No. 4, dated April 17 and 21, 1978.
- (2) Order for Modification of License, Docket No. 50-312, dated July 21, 1978.
- (3) Letters from J. H. Taylor to S. A. Varga, Chief, Light Water Reactors Branch No. 4, dated May 26, July 18 and August 11, 1978.
- (4) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch No. 4, dated July 7 and 18, October 7, November 22 and December 4, 1978.

### IV.

WHEREFORE, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is

#### EXPORT LICENSE APPLICATIONS SOURCE AND SPECIAL NUCLEAR MATERIAL IN KILOGRAMS

| Name of Applicant, Date of Application, Date Received, Application Number | Material Type           | Total Element | Total Isotope | End-Use                              | Country of Ultimate Destination |
|---------------------------------------------------------------------------|-------------------------|---------------|---------------|--------------------------------------|---------------------------------|
| Transnuclear, 12/07/78, 12/08/78, XSNMO1428.                              | 93.3% Enriched Uranium. | 3.810         | 3.55          | Fuel for Astra reactor, Seibersdorf. | Austria                         |
| Transnuclear, 12/07/78, 12/08/78, XSNMO1329.                              | 93.3% Enriched Uranium. | 21.554        | 20.110        | Fuel elements for FRJ-2 Reactor.     | W. Germany                      |
| Transnuclear, 12/07/78, 12/08/78, XSNMO1430.                              | 3.40 Enriched Uranium.  | 10.581        | 360           | Fuel for Doel 2 reload.              | Belgium                         |
| Westinghouse Elect., 11/17/78/ 12/12/78, XSNMO1431.                       | 3.3 Enriched Uranium.   | 325.822       | 8.845         | Fuel for Maanshan Units 1 and 2.     | Rep. of China                   |
| Mitsui and Co., 12/08/78, 12/13/78, XSNMO1432.                            | 3.95 Enriched Uranium.  | 26.902        | 756           | Fuel for Hamaoka Unit II—Reload 2.   | Japan                           |

[FR Doc. 78-35951 Filed 12-26-78; 8:45 am]

hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Rancho Seco this exemption supersedes the Order for Modification of License dated July 21, 1978, and the license is hereby conditioned as follows:

(1) Until implementation of the modifications defined in (2) below, the facility shall be operated in accordance with the procedures for operator action described in the licensee's letter dated April 14, 1978 as supplemented by letters dated April 21 and July 7, 1978, except that the maximum time for completion of operator action shall be 10 minutes after initiation of the event, and

(2) Authorization to operate the facility in the absence of implementation of the modifications to eliminate reliance on prompt operator action, as described in the licensee's letters of July 20, October 9, and November 22, 1978 is limited to Cycle 3.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, JR.,  
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-35949 Filed 12-26-78; 8:45 am]

[7590-01-M]

#### TRANSNUCLEAR

##### Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated this day December 19, 1978 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OFLINGER,  
Assistant Director, Export/Import and International Safeguards, Office of International Programs.



[7590-01-M]

[Docket No. 50-29]

**YANKEE ATOMIC ELECTRIC CO.****Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment incorporates provisions in the Technical Specifications required for (1) operation of Yankee-Rowe with the refueled Core XIV, (2) performance of subsequent steam generator inspections in accordance with the added Section 3/4.4.10 "Steam Generators", and (3) inclusion of four manual containment isolation valves in Table 3.6-1.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated November 30, 1976 (Proposed Change No. 119, Supplement 1), September 8, 1978 (Proposed Change No. 163) and October 30, 1978 (Proposed Change No. 164), and supplements thereto dated November 10, 1978, two (2) letters dated November

21, 1978, and a letter dated November 27, 1978, (2) Amendment No. 54 to License No. DPR-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,  
Chief, Operating Reactors  
Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-35950 Filed 12-26-78; 8:45 am]

[3110-01-M]

**OFFICE OF MANAGEMENT AND BUDGET****CLEARANCE OF REPORTS****List of Requests**

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 18, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the **FEDERAL REGISTER** is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Man-

agement and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

**NEW FORMS****DEPARTMENT OF ENERGY**

Low Income Weatherization CETA Labor Availability Survey, CS 133, single time, 1,000 community action agencies, 1,000 responses; 1,000 hours, Hill, Jerrerson B., 395-5867.

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

Producers' Questionnaire for Inv. 303-TA-6 and 7, leather wearing apparel, single time, 30 producers of certain leather wearing apparel, 30 responses; 240 hours, Geiger, Susan B., 395-5867.

**DEPARTMENT OF COMMERCE**

Industry and Trade Administration, Industrial Diamond and Small Diamond Dies, U.S. Consumption and Trade in 1978, ITA 992, single time, 750 consumers and reclaimers, 750 responses; 750 hours, C. Louis Kincannon, 395-3211.

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

National Institute of Education, Cigarette Smoking Among Teenagers: A Dual Survey, NIE 206 A and B, single time, Random sample of 4,275 adolescents aged 12-19, 4,275 responses; 1,261 hours, Office of Federal Statistical Policy and Standard, 673-7956.

Center for Disease Control, 1979 Survey of National Attitudes Toward Immunization, single time, 3,000 individuals over 18 in U.S. population, 3,000 responses; 1,560 hours, Richard Eisinger, 395-3214.

**DEPARTMENT OF JUSTICE**

Offices, Boards, Division, Department of Justice Metallurgical Coal Survey, ATR 168, single time, 30 coal producers, 30 responses; 15 hours, Laverne V. Collins, 395-3214.

**REVISIONS****DEPARTMENT OF HEALTH, EDUCATION AND WELFARE**

Public Health Service, 1979 Health Interview Survey Smoking Supple-

ment/Reinterview Questionnaire, other (see SF-83), households rep. civ. noninstitutionalized pop. of U.S., 40,000 responses; 29, 517 hours, Office of Federal Statistical Policy and Standard, 673-7956.

**DEPARTMENT OF TRANSPORTATION**

Federal Aviation Administration, Screening Activities and Arrest Reports, FAA 1650-7, FAA 1650-8, monthly, airport operators, 6,960 responses; 89,917 hours, Geiger, Susan B., 395-5867.

**EXTENSIONS****DEPARTMENT OF COMMERCE**

Bureau of Census, Quarterly Survey of Residential Alterations and Repairs, QHS 730, QHS 731, quarterly, owners or managers of rental properties in QHS, 6,400 responses; 1,067 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, confectionery (manufacturer's net sales by type of confectionery) (manufacturer's net sales), M2OC.1, M2OC.2, monthly, manufacturers of confectionery, 3,960 responses; 1,980 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, steel mill shapes and forms, (receipts, use, and inventories), M33H, monthly, consumers of steel mill shapes and forms, 3,000 responses; 500 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, export sales and orders, M4-A, monthly, manufacturers of durable goods for export, 3,000 responses; 1,500 hours, C. Louis Kincannon, 395-3211.

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

National Institutes of Health, framingham heart study exam 14 code sheet, decks 401 through 405 and 407, ISNIH-HL-22, single time, participants of ongoing longitudinal study, 1,000 responses; 2,000 hours, Office of Federal Statistical Policy and Standard, 673-7956.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Housing Production and Mortgage Credit, application for land development mortgage insurance, FHA 3551, on occasion, sponsors of land development projects, 1,000 responses; 500 hours, Strasser, A., 395-6132.

**DEPARTMENT OF INTERIOR**

Bureau of Land Management, application and license to mine coal (free use), 3130-3, on occasion, applicants license to mine coal, 100 responses; 17 hours, Ellett, C. A., 395-6132.

Bureau of Land Management, application to lease geothermal resources, 3200-8, on occasion, applicants to lease resources, 2,000 responses; 1,000 hours, Ellett, C. A., 395-6132.

DAVID R. LEUTHOLD,  
Budget and Management  
Officer.

[FR Doc. 78-35952 Filed 12-26-78; 8:45 am]

[7715-01-M]

**POSTAL RATE COMMISSION**

[Docket No. MC78-2]

**THIRD-CLASS DISCOUNT PROPOSAL, 1978****Expanded Issues**

ISSUED: DECEMBER 21, 1978.

On September 8, 1978, the United States Postal Service (Postal Service), pursuant to section 3623 of the Postal Reorganization Act (39 U.S.C. 3623), filed a Request with the Postal Rate Commission for a Recommended Decision on Establishing a Third-Class Carrier Route Presort Subclass. This filing has been assigned Docket No. MC78-2.

Notice of the filing was published in the **FEDERAL REGISTER** on September 18, 1978 (43 FR 41440-41).

Twenty-five parties have been granted status in the proceeding, either as intervenors or limited participants.

On October 18, 1978, the Officer of the Commission (OOC) filed a Petition to Expand the Proceedings in Docket No. MC78-2 to include two additional proposals: (1) To establish a per-piece and a per-pound rate structure for third-class bulk catalogs and circulars.

In addition, on October 26, 1978, the National Easter Seal Society, The National Foundation/March of Dimes, The American Lung Association and the St. Jude's Children Research Hospital (NESS, et al.) filed a petition to enlarge the scope of these proceedings to include consideration of a presortation discount for third class nonprofit bulk rate mail.

By Order Nos. 219 and 221, issued November 22, 1978 and November 24, 1978, respectively, the Commission granted the OOC's and NESS et al.'s petitions to enlarge the scope of the proceeding.<sup>1</sup>

It is the desire of the Commission that all interested persons be given adequate notice of the enlarged proceeding and that those parties who have not previously intervened have the opportunity to do so.

Therefore, notice is hereby given that any party desiring to be heard with reference thereto and to become a party to the proceeding, or to participate as party in any hearing thereon, should file a petition for leave to

<sup>1</sup> See attachments to this Notice.

intervene. Petitions for leave to intervene must be filed with the Secretary, Postal Rate Commission, Washington, D.C. 20268, on or before January 4, 1979, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not petitioner requests a hearing or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing. Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before January 4, 1979, file a written request for leave to be heard as a "limited participant," pursuant to section 19a of the Commission's rules of practice (39 CFR 3001.19a). In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 19b of the Commission's rules (39 CFR 3001.19b).

The request of the Postal Service for a recommended decision on establishing a third-class carrier route presort subclass, and all docket orders and filings in MC 78-2, are on file with the Commission and are available for public inspection during regular business hours.

By the Commission.

DAVID F. HARRIS,  
Secretary.

THIRD-CLASS DISCOUNT PROPOSAL, 1978  
(Order No. 219; Docket No. MC78-2)

ORDER GRANTING THE OOC'S MOTION TO ENLARGE SCOPE OF PROCEEDINGS

ISSUED: NOVEMBER 22, 1978.

On October 18, 1978, the Officer of the Commission (OOC) filed a petition to expand the proceedings in Docket No. MC78-2 to include two additional proposals. These proposals are to (1) establish a per-piece and a per-pound rate structure for third-class bulk mail and (2) merge the rate structures for third-class bulk catalogs and circulars. The Postal Service and an aggregation of third-class mailers, hereafter collectively referred to as ATCMU, et al., oppose the OOC's petition. Upon review of the petition of the OOC and the answers in opposition to the OOC's motion, we have decided to expand this docket to include the OOC's proposals.

In Docket No. MC76-3, the Commission had before it both of these proposals as well as three discount proposals similar to the Postal Service's proposal in Docket No. MC78-2. In each of the recommended decisions addressing these Docket No. MC76-3

<sup>1</sup> The third-class mailers who jointly oppose the OOC's petition are Associated Third Class Mail Users; Association of American Publishers; Direct Mail/Marketing Association, Inc.; Mail Advertising Service Association (International), Inc.; and Mail Order Association of America.



proposals, the Commission recognized that the various proposals had merit but were unsuitable for immediate adoption because of a lack of data to develop rates.<sup>3</sup> Consequently the Commission recommended against the proposals and the Governors adopted this Commission's recommendations.

In Docket No. R77-1, the OOC proposed that the Commission re-examine the two proposals that are the subject of his petition here. By Order No. 186, issued December 12, 1977, the Commission severed these proposals from Docket No. R77-1, primarily to insure the issuance of an opinion in Docket No. R77-1 within 10 months as required by 39 U.S.C. 3624(c).

As evident from Order No. 186, it was contemplated at the time of issuance of the order that petitions would be filed shortly after the rate case for reconsideration of the proposals.<sup>4</sup> At the time we issued the order severing these proposals, we were, of course, aware that the OOC had filed direct testimony which focused principally upon rate design, i.e., the problems associated with establishing a controlled circulation rate<sup>5</sup> that was lower than bulk third-class mail in all weight increments. However, the Commission's tentative and recommended decisions in Docket No. MC76-3 on these two proposals focused upon the absence of probative cost data. Thus, consistent with our tentative decision addressing the per-piece, per-pound proposal in Docket No. MC76-3, we recommended deferral by Order No. 186 in order to afford the parties an opportunity to develop evidence relating to cost causation, i.e., the determination of which costs for third-class bulk mail are traceable to a piece rate and which costs are traceable to a rate based on weight.

ATCMU, *et al.* contends that the cost data are still unavailable and therefore the OOC's proposal should remain outside this docket. Implicitly, ATCMU argues the only method to obtain the requisite accurate cost data would be through empiric studies, such as time and motion studies.<sup>6</sup> This position is not supported by either Order No. 186 or the Commission's decision in Docket No. MC76-3. In fact, to the contrary it is the Commission's view that as an expert body, it will not be foreclosed from considering proposals as being supported by accurate data when the data rests upon reasoned analyses, predicated upon a combination of elements such as proxies, empiric data and hypotheses.<sup>7</sup>

We find the other objections raised by the Postal Service and ATCMU, *et al.* are not of

sufficient magnitude to overcome the obvious advantages of consolidating into one docket proposals involving the same rates, herein third-class bulk rates. ATCMU, *et al.* suggests that the OOC should petition to open a new docket for consideration of his proposals. This would be a needless exercise. We would consolidate the proposals anyway, to permit the efficient assessment of the impact of each proposal on the other, as for example, the influence of the Postal Service's proposed discount upon the OOC's proposed per-piece rate.<sup>8</sup>

The Postal Service and ATCMU, *et al.* also claim that the inclusion of the OOC's proposals would delay the rendering of a decision on the Postal Service's discount proposal or otherwise cause the proceeding to be conducted with such expedition that full and fair consideration of the proposals will not be possible.

These arguments are not persuasive. Unlike rate cases, such as Docket No. R77-1, the Postal Service is empowered to implement the discount proposal on a temporary basis 100 days after filing pursuant to 39 U.S.C. 3641(c). This power to place into effect the proposed discount 100 days after filing nullifies the claim of ATCMU, *et al.* that the expansion of these proceedings will cause a delay that will prevent implementation of a carrier route subclass which "will be beneficial to USPS and to mail users" (Answer of ATCMU, *et al.*, p. 6).

In any event, we do not foresee any significant delay arising from expanding these proceedings to include the OOC's proposals. As indicated above, the gravity of a delay is not great in view of the Postal Service's power to implement its discount proposal on a temporary basis. If any party is of the opinion that the extant procedural schedule will not allow adequate time for a full and fair hearing on the OOC's proposals, it may petition the presiding officer for appropriate modifications of the procedural schedule. If the presiding officer finds merit in any such petition, he may modify the procedural schedule accordingly. At present, it is our view that the extant procedural schedule allows sufficient latitude to make any modifications necessary in order to provide a full and fair hearing and still reach the conclusion of the proceedings by May 1, 1979, as originally planned.

The Commission orders:  
The OOC's petition to enlarge the scope of these proceedings is granted.

By the Commission.

DAVID F. HARRIS,  
Secretary.

#### THIRD-CLASS DISCOUNT PROPOSAL, 1978

[Order No. 221; Docket No. MC78-2]

ORDER GRANTING MOTION TO ENLARGE SCOPE OF THE PROCEEDINGS TO INCLUDE CONSIDERATION OF A DISCOUNT FOR THIRD-CLASS NON-PROFIT BULK RATE MAIL.

ISSUED NOVEMBER 24, 1978.

On October 26, 1978, the National Easter Seal Society, The National Foundation/March of Dimes, the American Lung Association and the St. Jude Children's Research Hospital (hereinafter NESS, *et al.*) filed a petition to enlarge the scope of these pro-

<sup>3</sup>In this regard we request, if warranted, that the OOC present alternative schedules, one with the proposed presort discount and the other without the presort discount.

ceedings to include consideration of a presortation discount for third-class nonprofit bulk rate mail. In support of its motion the parties cite Commission Order Nos. 179 (September 23, 1977) and 186 (December 12, 1977). Those orders arose out of Docket No. R77-1 and involve the deferral of various related third-class classification issues because of the exigency involved in meeting the 10-month statutory deadline for rate cases (See 39 U.S.C. 3624(c)). In Order No. 186 the Commission stated that after the completion of Docket No. R77-1, it would entertain petitions to commence an omnibus proceeding to consider all the deferred third-class issues.

NESS, *et al.* argue that Docket No. MC78-2 is the ideal vehicle in which to consider their proposal. They state that the data submitted by the Service in this docket are directly relevant to considerations of a carrier-route presort discount for third-class nonprofit mail, and that dealing with all of third-class mail at the same time would maximize economy and minimize confusion for mailers.

Petitioners also allege that denial of the instant motion would constitute discrimination against third-class nonprofit mail and a preference to third-class regular rate mail, citing 39 U.S.C. 403(c). This would occur because there is no alternative forum in which to hear the proposal and the cost of service principles upon which the discount is based are equally applicable to third-class nonprofit mail.

The Postal Service is the only party opposing the motion. It does so both on substantive and procedural grounds. Procedurally, the Service claims that this docket is not the omnibus proceeding contemplated by the Commission in Order No. 186 since such a proceeding would require exploration of data and issues totally unrelated to its proposal in this docket. It refers to its answer to the OOC's motion to enlarge the issues<sup>9</sup> where it contended that expanding the issues would delay the proceedings.

On substantive grounds, the Service raises two issues: (1) Whether the Commission has the authority to revise the Congressionally-established categories of mail entitled to preferred rates under 39 U.S.C. 3626; and (2) that consideration of the NESS, *et al.* proposal would be unfair to the majority of nonprofit mailers who could not meet the presort requirements and would be forced to pay higher rates in order to meet the Service's revenue requirements.<sup>10</sup> On the first issue, the Service suggests that the splitting of the third-class nonprofit subclass may well be beyond the Commission's authority and, in any case, runs contrary to Congressional and Commission policy to simplify the mail classification schedule. The second issue is raised by the Service because, unlike third-class regular rate mail which makes a contribution to institutional costs, nonprofit mail only pays its attributable costs. While the Service expects to maintain the same revenues for third-class bulk regular rate

<sup>9</sup>In Order No. 219 (November 22, 1978), the Commission granted the OOC's motion to expand the issues in this case to include, *inter alia*, consideration of adopting a per-piece and per-pound rate structure.

<sup>10</sup>See page 1, fn. 1, *supra*. Considerations of delay have been adequately dealt with in Order No. 219 and need not be repeated here.

<sup>11</sup>The Service also claims that NESS *et al.* do not represent these mailers.

mail on account of the incremental revenues from new volume, any reduction in rates for nonprofit carrier route presorted mail would require an increase in the rates for that nonprofit mail not presorted to carrier routes.

Upon consideration of all the arguments, the Commission has decided to grant the motion.

When the Commission issued Order No. 186, it had no assurance that the Service would be filing a third-class presort discount proposal with the Commission. Therefore, it was contemplated that, as relevant data became available through the study program in Docket No. MC76-5, the Commission would entertain proposals for a third-class presort discount for both regular-rate and nonprofit mail, as well as any other relevant rate structure changes involving third-class. It was expected that such a proceeding could start up shortly after Docket R77-1 was completed. We do not see how the filing under consideration in this case could nullify the opportunities for other parties to petition for alternative changes, such as the ones discussed by the Commission in Order No. 186. When the Commission severed various issues from Docket R77-1 because of the need for expedition, it promised a future forum for those issues. From a procedural point of view, the Service has raised no arguments which would cause us to deny to NESS *et al.* the opportunity to litigate its proposals in this docket.

Concerning the Commission's authority to realign the preferred rate subclasses, that issue was raised in Docket No. MC76-2,<sup>11</sup> concerning the OOC's proposal to merge some of the second-class preferred rate categories. The Commission analyzed the legislative history, the policies of the Act, and the wording of the relevant statutes, and found—as a legal matter—that the wording of 39 U.S.C. 3626 does not bar a merger of the preferred rate categories.<sup>12</sup> Although our previous opinion is not dispositive of this issue, this legal question should not be a bar to Commission consideration of an otherwise relevant issue. Of course, after the development of a complete record, the Commission still might find that it does not have the requisite authority to effectuate the proposal in question.

We find that the Service's argument with respect to the "unfairness" of the proposal to small nonprofit mailers to be unpersuasive. The notion that some mailers may pay higher rates as a result of granting a presort discount to nonprofit third-class mail is neither startling nor without precedent. In Docket No. R77-1, the Commission recommended, and the Governors adopted, a multi-tiered second-class rate structure keyed to level of presortation.<sup>13</sup> Under this rate structure, mailers who cannot meet the presort requirements perforce must pay rates which are higher than they would have been under the former rate structure which contained no presort discounts. We

<sup>12</sup>Recommended Decision Concerning Certain Proposals of the Officer of the Commission to Simplify the Classification Structure of Second-Class Mail and the Proposal of the Agricultural Publishers Association to Provide a Rate Preference for the Editorial Portion of Agricultural Publications, Docket No. MC76-2 (March 30, 1978).

<sup>13</sup>However, based on the facts, such a merger was not recommended.

<sup>14</sup>PRC Op. R77-1, pp. 303-32 (May 12, 1978).

found such a result consistent with our cost of service principles, and absent some other considerations which were not extant in R77-1, we would continue to find merit in such a rate structure.

In the same vein, however, we would caution the parties concerning their evidentiary presentations in this case. Before the Commission could grant the NESS, *et al.* proposal, the record would have to contain substantial evidence to support it. Such evidence would likely include a reasonable estimate of the number of pieces of third-class nonprofit mail that would be eligible for a presort discount. We do not know whether the Service has such data, but it may be incumbent upon the proponents of this proposal to conduct a thorough study of the third-class nonprofit market in order to obtain this information. The Commission orders:

The petition of NESS *et al.* to enlarge the scope of these proceedings is granted.

By the Commission.

DAVID F. HARRIS,  
Secretary.

[FR Doc. 78-35927 Filed 12-26-78; 8:45 am]

[7910-01-M]

#### RENEGOTIATION BOARD

##### EXCESSIVE PROFITS AND REFUNDS

###### Interest Rate

Notice is hereby given that, pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended, the Secretary of the Treasury has determined that the rate of interest applicable, for the purposes of said section 105(b)(2) and section 108 of such act, to the period beginning January 1, 1979 and ending on June 30, 1979, is 9% per centum per annum.

Dated: December 20, 1978.

GOODWIN CHASE,  
Chairman.

[FR Doc. 78-35973 Filed 12-26-78; 8:45 am]

[8025-01-M]

#### SMALL BUSINESS ADMINISTRATION

[PROPOSED LICENSE NO. 09/09-0235]

##### UNIVERSAL INVESTMENT CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 (1978) by Universal Investment Corporation, 110 E. Ann Street, Carson City, Nevada 89701, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. et seq.).

The proposed officers, directors and principal stockholders are:

Marlow D. Gregers, President, General Manager, Director, 12.5%, 240 Redwood Drive, Pasadena, California 91105.

Beryl B. Stolper, Secretary, Director, 50%, 1000 Kerrigan Drive, Oakland, California 94605.

Roger DuCharme, Vice President, Director, 917 N. Carson Street, Carson City, Nevada 89701.

There will be no additional ten or more percent shareholders.

The SBIC will begin operations with an initial capitalization of \$400,000. They contemplate a plan of operation which centers on a diversified investment policy. The Applicant, a Nevada corporation, intends to primarily make investments in small business concerns located in the State of Nevada.

Matters involved in SBA's consideration of the application include (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and financial soundness, in accordance with the Act and Regulations), and (3) whether the proposed licensing action would be in furtherance of the purpose of the Act.

Notice is hereby given that any person may, not later than January 11, 1979, submit to SBA in writing comments on the proposed SBIC to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Carson City, Nevada.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 18, 1978.

PETER F. MCNEISH,  
Deputy Associate Administrator  
for Investment.

[FR Doc. 78-35963 Filed 12-26-78; 8:45 am]

[8025-01-M]

[Application No. 04/04-5155]

#### UNIVERSAL LENDING OF AMERICA, INC.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Universal Lending of America, Inc. (applicant) with the Small Business Investment Administration pursuant to 13 CFR 107.102 (1978).

The officers, directors and stockholders are as follows:

Paul Backman, President & 17% Stockholder, 8950 N.W. 22nd Ct., Pembroke Pines, Florida 33024.



Jesse Small, Secretary, Treasurer & 50% Stockholder, 2490 Park Road, Hallandale, Florida 33009.  
 Vivian Elmini, Vice President, 3915 Grant Street, Hollywood, Florida 33021.  
 Lewis Levey, 33% Stockholder, 850 N.E. 179th Terrace, North Miami Beach, Florida 33162.

The applicant will maintain its principal place of business at 2450 Hollywood Boulevard, Hollywood, Florida 33006. It will begin operations with \$300,000 of private capital derived from the sale of 300 shares of stock to the persons shown above. It is anticipated that the capitalization will be increased to \$500,000 within one year from the date of issuance of the license by the purchase of additional stock by the present stockholders.

The applicant will conduct its operations in the Greater Hollywood and Broward County areas.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than January 11, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Hollywood, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: December 18, 1978.

PETER F. McNEISH,  
 Deputy Associate Administrator  
 for Investment.

(FR Doc. 78-35964 Filed 12-26-78; 8:45 am)

# [8025-01-M]

(Declaration of Disaster Loan Area No. 1542; Amendment No. 1)

## OKLAHOMA

### Declaration of Disaster Loan Area

The above numbered Declaration (see 43 FR 52567), is amended by adding the following counties:

#### County, natural disaster(s) and date(s)

Adair, Drought, 6/1/78-11/1/78.  
 Cherokee, Drought, 6/1/78-11/1/78.  
 Craig, Drought, 6/1/78-11/1/78.  
 Delaware, Drought, 6/1/78-11/1/78.  
 Mayes, Drought, 6/1/78-11/1/78.  
 Noble, Drought, 6/1/78-11/1/78.  
 Nowata, Drought, 6/1/78-11/1/78.  
 Ottawa, Drought, 6/1/78-11/1/78.  
 Payne, Drought, 6/1/78-11/1/78.  
 Rogers, Drought, 6/1/78-11/1/78.  
 Tulsa, Drought, 6/1/78-11/1/78.  
 Wagoner, Drought, 6/1/78-11/1/78.  
 Washington, Drought, 6/1/78-11/1/78.

and adjacent counties within the State of Oklahoma as a result of natural disasters as indicated. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on May 3, 1979, and for economic injury until the close of business on August 3, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 18, 1978.

A. VERNON WEAVER,  
 Administrator.

(FR Doc. 78-35965 Filed 12-26-78; 8:45 am)

# [8025-01-M]

(License No. 01/01-0290)

## NEW ENGLAND CAPITAL RESOURCES CORP.

### Surrender of License

Notice is hereby given that New England Capital Resources Corporation (NECR) 50 Washington St., South Norwalk, Conn. 06854, a Massachusetts Corporation, has surrendered its License No. 01/01-0290, issued by the Small Business Administration on September 29, 1978.

NECR has complied with all conditions prescribed by SBA for the surrender of its License. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations adopted thereunder, the surrender of the License of NECR is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalogue of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 18, 1978.

PETER F. McNEISH,  
 Deputy Associate Administrator  
 for Investment.

(FR Doc. 78-35966 Filed 12-26-78; 8:45 am)

# [8025-01-M]

## AMISTAD DOT VENTURE CAPITAL, INC.

(Application No. 02/02-5358)

### Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Amistad DOT Venture Capital, Inc. (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1978).

The officers, directors and stockholders of the applicant are as follows: Percy E. Sutton, Chairman of the Board and President, 10 West 135th Street, New York, New York 10037.

Pierre M. Sutton, Vice President, Secretary, Treasurer, Director, 333 East 81st Street, New York, New York 10028.

Sylvia E. Schoultz, Assistant Secretary, Director, 246 West 150th Street, New York, New York 10039.

Inner City Broadcasting, Corporation, 100% Common Stockholder, 801 Second Avenue, New York, New York 10019.

Applicant will maintain its principal place of business at 801 Second Avenue, New York, New York 10019 and will begin operations with \$500,000 of private capital derived from the sale of 5000 shares of common stock to the Inner City Broadcasting Corporation. In addition to the initial private capital being provided by the above mentioned stockholder and subject to SBA approval, the applicant expects to increase its paid-in capital with funds from the Minority Business Resource Center of the Federal Railroad Administration, Department of Transportation.

The applicant will conduct its operations nationwide from its principal place of business in the State of New York and from a branch office in the District of Columbia. Although applicant does not intend to restrict its investments to small business concerns in any particular industry, it does intend to make a concerted effort to finance small business concerns which are in the communications industry and the transportation industry in addition to concerns in the electronics industry.

As a small business investment company to be licensed pursuant to Sec-

tion 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than (15 days from the date of publication of this notice), submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: December 20, 1978.

PETER F. McNEISH,  
 Deputy Associate Administrator  
 for Investment.

(FR Doc. 78-36014 Filed 12-26-78; 8:45 am)

# [8025-01-M]

## MANSFIELD CAPITAL CORPORATION

(Proposed License No. 01/01-0295)

### Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Mansfield Capital Corporation (Applicant), for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of Vermont and it will commence operations

with a capitalization of \$350,000, which amount is to be raised through the sale of 100 percent of the Applicant's issued and outstanding shares of Common Stock, No Par Value, to Stevens-Farrington, Inc., a New Hampshire corporation, which is wholly owned by Stephen H. Farrington, President, Treasurer and Director of the Applicant. Stevens-Farrington, Inc., will have no other assets or liabilities other than its shares of stock in the Applicant and will conduct no other business.

The Applicant will have its principal place of business at Mountain Road, Stowe, Vermont 05672, and it intends to conduct operations primarily in the States of Vermont, Massachusetts, New Hampshire and Maine.

The Officers and Directors of the Applicant will be:

Stephen H. Farrington, President, Treasurer and Director, Notch Brook, Stowe, Vermont.

Bruce Nourjian, Vice President, Secretary and Director, Shaw Hill, Moscow, Vermont.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and SBA Regulations.

Notice is hereby given that any person may not later than (15 days after the date of publication of this Notice), submit written comments on the Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416. A copy of the Notice shall be published by the Applicant in a newspaper of general circulation in Burlington, Vermont.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: December 20, 1978.

PETER F. McNEISH,  
 Deputy Associate Administrator  
 for Investment.

(FR Doc. 78-36013 Filed 12-26-78; 8:45 am)

# [8025-01-M]

## SEAFIRST CAPITAL CORPORATION

(Proposal No. 10/10-01661)

### Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 104.102 (1978)), by Seafirst Capital Corporation, Securities Building,

Third Avenue and Stewart Street, Seattle, Washington 98101 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and stockholders are:

NAME AND ADDRESS, TITLE AND RELATIONSHIP, AND PERCENT OF OWNERSHIP

William D. Petfit, Jr., President and Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Steven G. Blanchard, Vice President and Manager, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Richard D. Bonesteel, Secretary, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Philip L. Wright, Treasurer, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98106.

G. Eric Pucher, Assistant Secretary, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Charles Gleiser, Assistant Treasurer, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

H. Lee Carter, Director, 1001 Fourth Avenue, Seattle, Washington 98154.

James B. Gilchrist, Director, 1001 Fourth Avenue, Seattle, Washington 98154.

William R. Jennings, Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Georgene Lee, Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Seafirst Mortgage Corporation, Sole Shareholder, 100%, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Seafirst Mortgage Corporation is the wholly owned subsidiary of Seattle-First National Bank which is a wholly owned subsidiary of Seafirst Corporation, a publicly held one-bank holding company.

The Applicant proposes to begin operations with a capitalization of \$2,500,000 and will be a source of equity capital and long term loan funds for qualified small business concerns. The Applicant intends to render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than (15 days from the date of publication of this Notice), submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441



"L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 20, 1978.

PETER F. McNEISH,

Deputy Associate Administrator  
for Investment.

(FR Doc. 78-36015 Filed 12-26-78; 8:45 am)

[4910-22-M]

## DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

### NATIONAL ADVISORY COMMITTEE ON UNIFORM TRAFFIC CONTROL DEVICES

#### Open Meeting

Pursuant to Executive Order 11671, the Federal Highway Administration (FHWA) announces the meeting dates and relevant information for the Annual Meeting of the National Advisory Committee on Uniform Traffic Control Devices. The meeting will be held January 10-12, 1979, at the Springfield Hilton, Springfield, Va., as follows:

Wednesday, January 10—Executive Committee Meeting, 7:30 p.m.

Thursday, January 11—Technical Subcommittee Meeting, 8-5 p.m., Research Subcommittee Meeting, 7:30-9:30 p.m.

Friday, January 12—General Session, 8-5 p.m.

Attendance by the public will be limited to space available. For further information contact Robert E. Conner, Executive Director, Office of Traffic Operations, Federal Highway Administration, Washington, D.C. 20590, code 202-426-0411.

Purpose. This Committee reviews currently approved standards, guides, and warrants for traffic control devices including signs, signals, and pavement markings contained in the Manual on Uniform Traffic Control Devices. They recommend revisions of such standards, propose new ones to meet new developments and improvements and provide advice to the Federal Highway Administrator to the end that the Manual shall be at all times, and as far as practicable, a complete and up-to-date presentation of best practices.

Agenda. Technical items proposed for review and discussion at meetings of the respective Subcommittees include the following:

#### SUBCOMMITTEE ON SIGNS

- (a) Clarification of sign legends, PARKING, STANDING, STOPPING.
- (b) Spacing of Chevron alignment signs.

(c) Development of a symbol for POLICE sign legend.

(d) Development of a symbol for motorcycles or trail bikes.

#### (e) TASK FORCE ACTIVITIES AND REPORTS:

1. Sign Symbols
2. Placement of Signs at Intersections
3. Recreational and Motorist Service Signs
4. Placement of Warning Signs
5. CB-9 Monitored Sign
6. R.R. Warning Signs

#### SUBCOMMITTEE ON SIGNALS

(a) Flashing Red Signals for Median Crossovers, IV-9.

(b) Red Arrow for No Right Turns, Sg-98.

(c) Prohibition of Straight Ahead Green Arrow, Sg-112.

(d) Left Turn Displays for Permissive Left Turns, Sg-113.

(e) Alternatives to Full Signalization at School Pedestrian Crossings, Sg-44.

(f) Nonilluminated Pedestrian Signal, Sg-115.

#### (g) TASK FORCE REPORTS

1. Signal Indications, Sequences and Phasing

2. Pedestrian Signal Indications

3. Traffic Control Devices Handbook, Part IV

4. Signal Location and Intensity

5. Signal Warrants

#### SUBCOMMITTEE ON MARKINGS

(a) Colors for Bridge Object Markers.

(b) Use of Narrow Edgelines.

(c) Mandatory Edgelines on Rural Highways.

(d) Evaluation of Drivers Eye Height for Highway Design.

(e) Use of Delineators on Freeway Tangents.

(f) Use and Spacing of Raised Pavement Markers.

(g) Marking Patterns for Freeway Lane Drops.

(h) Use of Dotted Lines Through Entrance/Exit Ramps.

(i) Mandatory Use of Centerline Markings.

(j) Color of Delineators at Freeway Off-Ramps.

#### SUBCOMMITTEE ON CONSTRUCTION & MAINTENANCE

(a) Detour Design Criteria, VI-6.

(b) Maintained Visibility Levels of Channelizing Devices, VI-7.

(c) Handbook, Part VI.

(d) Design of Safety Vests, Cn-35.

(e) Barricade Warning Lights Specification (ITE).

(f) Fluorescent Colors (Red-Orange).

(g) Design of Flaggers Paddle.

#### SUBCOMMITTEE ON GRADE CROSSINGS

(a) Handbook for Part VIII.

(b) Warning Signs on Roads Parallel to a Railroad.

(c) Black Border on Crossbuck Sign.

(d) Stop Signs at Railroad Crossings.

(e) Federal Rules for Developing Uniform Warrant Criteria.

#### RESEARCH SUBCOMMITTEE

(a) Use of Strobe Lights at Railroad/Highway Grade Crossings.

(b) Use of Color Purple for Variable Message Signs.

(c) Detour Design Criteria.

(d) Steady and Flashing Downward Yellow Arrow Lane Control.

(e) Reports on Federally-Coordinated Program Progress.

(f) Experimentation with Tourist Information Sign Legends.

(g) Transportation Research Board Cooperation.

The agenda for the General Session, January 12, includes the following:

(a) Call to Order—Executive Director

(b) Opening Remarks—NAC Chairman

(c) Reports of Officers

(d) Reports and Recommendations of Technical Subcommittees.

(e) Reports and Comments from Members and Other Participants.

Additional items may be added to the agenda items noted with the approval of the Subcommittee Chairmen and within allotted time.

Issued on: December 21, 1978.

J. J. CROWLEY,

Director,

Office of Traffic Operations.

(FR Doc. 78-35930 Filed 12-26-78; 8:45 am)

[4810-25-M]

## DEPARTMENT OF THE TREASURY

Office of the Secretary

### DEBT MANAGEMENT ADVISORY COMMITTEES

#### Meetings

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that meetings will be held in Washington on January 30 and 31, 1978, of the following debt management advisory committees:

American Bankers Association  
Government Borrowing Committee  
Public Securities Association  
U.S. Government and Federal Agencies Securities Committee

The agenda for the American Bankers Association Government Borrowing Committee meetings provides for working sessions on January 30 and a report to the Secretary of the Treasury and Treasury staff on January 31.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meetings provides for working sessions on January 30 and a report to the Secretary of the Treasury and the Treasury staff on January 31.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 190, revised, I hereby determine that these meetings are concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees are utilized by this Department at meetings called by representatives of the Office of the Secretary. When so utilized they are recognized to be advisory committees under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such these debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the advice provided in reports of these committees, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of the meetings of these committees and for providing annual reports setting forth a summary of their activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: December 20, 1978.

ANTHONY M. SOLOMON,

Under Secretary

for Monetary Affairs.

(FR Doc. 78-35980 Filed 12-26-78; 8:45 am)

[7035-01-M]

## INTERSTATE COMMERCE COMMISSION

### BURLINGTON NORTHERN INC.

(Exception Under Section (a), Paragraph (1), Part (v), Second Revised Service Order No. 1332; Exception No. 8)

Decided December 15, 1978.

To: Burlington Northern Inc.

By the Board.

The Texas Mexican Railway Company (TM) has purchased fifty (50) new boxcars which will be delivered to Burlington Northern Inc. (BN), at Minne-

apolis, Minnesota, for movement to the TM. TM has allowed BN to load these cars at Minneapolis, Minnesota, for movement to the TM. Reduced loadings of these cars on the BN to destinations as directed by TM means the BN will hold some of the cars beyond the 60 hours permitted in Section (a)(2)(ii) of this order prior to placing of cars for loading.

Order. Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(v) of Second Revised Service Order No. 1332, Burlington Northern Inc., is authorized to assemble and hold up to fifty (50) new Texas Mexican Railway Company (TM) boxcars for loading as directed by TM, regardless of the provisions of Section (a)(2)(ii) of this order.

These cars shall become fully subject to all provisions of Second Revised Service Order No. 1332 when loading is completed and instructions for forwarding are received from the shipper.

Effective December 15, 1978.

Expires January 12, 1979.

JOEL E. BURNS,

Chairman,

Railroad Service Board.

(FR Doc. 78-35858 Filed 12-26-78; 8:45 am)

[7035-01-M]

(Notice No. 145)

### MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before January 26, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative in named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable

rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopsis form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-77869, filed October 12, 1978. Transferee: BARLOW TRUCK LINES, INC., Route 2, Warrensburg, MO 64093. Transferor: FARRIS TRUCK LINE, P.O. BOX 224, Fawcett, MO 64448. Applicants' representative: Tom B. Kretsinger, Esq., Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64088. Authority sought by transferee to purchase the operating rights of transferor, as set forth in Permit No. MC-138557 (SUB No. 3), issued to Walt Keith Trucking, Inc., and acquired by transferor herein pursuant to MC-P-12977, approved October 18, 1977 and consummated December 14, 1977, as follows: Meat, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the facilities of Dubuque Packing Co., 7, at or near Denison, IA to points in that part of the United States in and east of MN, IA, NE, KS, OK, and TX, under a continuing contract or contracts with World Wide Meats. Transferee presently holds no authority from this Commission. Application has been filed under Section 210a(b).

No. MC-FC-77950, filed December 8, 1978. Transferee: SAWYER CORP., 3761 Wolf Road, Saginaw, MI 48605. Transferor: Walter F. Hutfilz and James A. Hutfilz, d.b.a. Walter F. Hutfilz, 2850 Bay Road, Saginaw, MI 48604. Applicants' representative: Karl L. Gotting, Attorney, 1200 Bank of Lansing Building, Lansing, MI. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-139820 (SUB No. 1), issued June 12, 1975, as follows: Gypsum rock, crushed, ground or pulverized, in bulk, in dump vehicles, from the facilities of the United States Gypsum Company at or near Alabaster, MI to points in IN and OH (except points in Ashtabula, Cuyahoga, Lake, Summit, Muskingum, Licking, Franklin, Wayne, Geauga, Lorain, and Portage Counties, OH). Transferee presently holds authority from this Commission under No. MC-138383. Application has not



been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,  
Secretary.

[FR Doc. 78-35856 Filed 12-26-78; 8:45 am]

# [7035-01-M]

## SOUTHERN PACIFIC TRANSPORTATION CO.

[Exception under Section (a), Paragraph (1), Part (v) second revised service order No. 1332; exception No. 7, amt No. 1] Decided December 15, 1978.

To: Southern Pacific Transportation Company.

By the Board.

Upon further consideration of Exception No. 7 (Southern Pacific Transportation Company), and good cause appearing therefor:

It is ordered,

Exception No. 7 to Second Revised Service Order No. 1332 is amended to:

Expire December 31, 1978.

Issued at Washington, D.C., December 15, 1978.

JOEL E. BURNS,  
Chairman,  
Railroad Service Board.

[FR Doc. 78-35858 Filed 12-26-78; 8:45 am]

# [7035-01-M]

## FOURTH SECTION APPLICATION FOR RELIEF DECEMBER 1, 1978.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 11, 1979. FSA No. 43646, Korea Marine Transport Co., Ltd. No. 100, intermodal rates on general commodities, between rail carriers' terminals at U.S. Atlantic and Gulf Coast Ports, on the one hand, and Ports in Japan and Korea, in Trans-Pacific Freight Conference of Japan/Korea, Agent, Tariff No. 1, ICC 1, and Pacific Westbound Conference, Agent, Tariff No. 8-A, ICC 4, to become effective January 14, 1979. Grounds for relief—all water competition.

By the Commission.

H. G. HOMME, Jr.,  
Secretary.

[FR Doc. 78-36018 Filed 12-26-78; 8:45 am]

# [7035-01-M]

## FOURTH SECTION APPLICATION FOR RELIEF

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 11, 1979. FSA No. 43644, Southwestern Freight Bureau, Agent's No. B-791, as amended, rates on paraxylene and xylene (xyol) and kindred articles, from stations in Southwestern Territory to stations in Southern Territory, in Supplements 7 and 93 to its Tariffs 11-J and SW/S 123-P, ICC 5348 and 5152, respectively to become effective January 18, 1979. Grounds for relief—rate relationship.

H. G. HOMME, Jr.,  
Secretary.

[FR Doc. 78-36017 Filed 12-26-78; 8:45 am]

# [7035-01-M]

[No. MC-C-8619; No. 33745]

## PETITION FOR INVESTIGATION—BUS TERMINAL OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

In the matter of Transport of New Jersey; Asbury Park-New York Transit Corporation; Decamp Bus Lines; Hudson Bus Transportation Company, Inc.; Hudson Transit Lines, Inc.; Lakeland Bus Lines, Inc.; Lincoln Transit Company; Manhattan Transit Company; Maplewood Equipment Company; New York-Keansburg-Long Branch Bus Company, Inc.; North Boulevard Transportation Company; Somerset Bus Company, Inc.; Suburban Transit Corporation; and Port Authority of New York and New Jersey—investigation of operations and practices.

AGENCY: Interstate Commerce Commission.

ACTION: Institute investigation and consolidate proceedings.

SUMMARY: Request to institute an investigation into the conditions surrounding the use of the mid-Manhattan bus terminal for interstate motor bus operations granted. Proceedings are consolidated. Scheduled for pre-hearing conference on January 8, 1979, in New York, N.Y.

## FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Harvey Gobetz, Washington, D.C. 20423, (202) 275-7693.

SUPPLEMENTARY INFORMATION: Petitioning motor bus carriers Trailways, Inc., Safeway Trails, Inc., Trailways of New England, Inc., American Bus Lines, Inc., and Continental Edwards Motor Transit Co. as well as numerous individuals working near or using the mid-Manhattan bus terminal have requested that an investigation be instituted to inquire into the manner and method by which motor bus operators serving New York City are compelled to use this terminal and the facilities of the Port Authority of New York and New Jersey. Petitioners asserted that fees paid for use of the terminal are too high and are extortionate in nature and that the facilities are unsafe. The problems associated with the terminal allegedly threaten the continuation of adequate motor bus service.

In an earlier notice (42 FR 67592) interested parties were invited to comment on the following issues: (1) the impact of the method and manner of the terminal's operations upon the interstate motor bus service, (2) the propriety of restrictions limiting motor bus terminal operations to the Port Authority's facility, (3) the charges paid by petitioners for the use of the facility and burdens those charges place upon petitioners' financial outlook, (4) the Commission's jurisdiction, and (5) the appropriate relief. Upon review of these comments it has been determined that an investigation into these matters should be instituted in docket No. 36745.

Docket No. MC-C-8619 was instituted on the Commission's own motion by order served June 16, 1975. Because these investigations involve similar issues which are susceptible of mutual resolution, and because it is in the interest of the Commission and the public to conserve time and resources, the proceedings have been consolidated. A pre-hearing conference has already been scheduled for January 8, 1979, in New York, N.Y.

Dated December 15, 1978.

By the Commission, Division 1, Commissioners Brown, Gresham, and Clapp.

NANCY L. WILSON,  
Acting Secretary.

[FR Doc. 78-36016 Filed 12-26-78; 8:45 am]

# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409, 5 U.S.C. 552b(e)(3)).

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# [6740-02-M]

FEDERAL ENERGY REGULATORY COMMISSION  
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 58895, December 18, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 20, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

ER-16—ER78-511, Public Service Company of Oklahoma.

KENNETH F. PLUMB,  
Secretary.

[S-2595-78 Filed 12-22-78; 11:22 am]

# [6735-01-M]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

DECEMBER 22, 1978.

TIME AND DATE: 10 a.m., December 21, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following additional agenda item: 1. *Mine Safety and Health Administration (MSHA) v. George A. Harvel*, Docket No. DENV 77-40-P (petition for discretionary review). It was

determined by unanimous vote of all five Commissioners that Commission business required that this item be added on the December 21 agenda and that no earlier announcement of the change was possible.

## CONTACT PERSON FOR MORE INFORMATION:

Don Terry, 202-653-5644.

[S-2597-78 Filed 12-22-78; 12:08 pm]

# [7550-01-M]

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 pm., Wednesday, January 3, 1978.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: (1) Ratification of Board actions taken by notation voting during the month of December, 1978. (2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions are available from the Executive Secretary following the meeting.

## CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; telephone 202-523-5920.

Date of Notice: December 22, 1978.

[S-2596-78 Filed 12-22-78; 11:22 am]

# [7600-01-M]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published December 26, 1978—S-2583-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: December 28, 1978 at 9:30 a.m.

CHANGES IN THE MEETING: The meeting for December 28, 1978 has been rescheduled to January 5, 1979, at 9:30 a.m.

Dated: December 22, 1978.

[S-2594-78 Filed 12-22-78; 11:22 am]

# [8010-01-M]

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [43 FR 58898, December 18, 1978].

STATUS: Open/closed meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 12, 1978.

CHANGES IN MEETING: Deletion/addition of items.

The following item will not be considered at the open meeting scheduled for Thursday, December 21, 1978 at 10 a.m.:

Consideration of a request by the Firestone Tire & Rubber Company that the Commission review the Division of Corporation Finance's determination concerning a shareholder proposal submitted to the Company by Mr. Edward C. Calvert. For further information, please contact William E. Morley at 202-755-1240.

The following additional items will be considered at the closed meeting scheduled for Thursday, December 21, 1978, immediately following the open meeting at 10 a.m.:

Institution of injunctive action.  
Settlement of injunctive actions.

Commissioners Loomis, Evans, Pollock and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

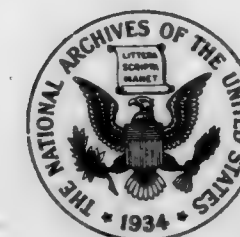
DECEMBER 20, 1978.

[S-2598-78 Filed 12-22-78; 12:41 pm]



WEDNESDAY, DECEMBER 27, 1978

PART II



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**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**Office of the Secretary**

**BOARD OF CONTRACT  
APPEALS, ESTABLISHING  
PROCEDURES FOR  
NATIONAL HOUSING  
ACT CONTRACTS**

**Registered  
Federal Property**



[4210-01-M]

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

Office of the Secretary

[24 CFR Part 20]

[Docket No. R-78-896]

**BOARD OF CONTRACT APPEALS, ESTABLISHING  
PROCEDURES FOR NATIONAL HOUSING  
ACT CONTRACTS**

AGENCY: HUD Board of Contract Appeals.

ACTION: Proposed Rule.

**SUMMARY:** This rule sets forth procedures for handling bid protests arising under National Housing Act Contracts involving HUD-acquired properties. The proposed rule is needed to assure administrative review procedures for bidders whose bid protests are not within the jurisdiction of the Comptroller General.

**DATES:** Comments received on or before January 26, 1979 will be considered prior to publication of a final rule.

**ADDRESSES:** Send written comments to Rules Docket Clerk, Room 5218, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

**FOR FURTHER INFORMATION  
CONTACT:**

Michael F. Burke, Chairman, Board of Contract Appeals, 451 Seventh Street, S.W., Washington, D.C. 20410 (202-755-6318).

**SUPPLEMENTARY INFORMATION:** The Comptroller General has stated that the General Accounting Office (GAO) is without jurisdiction to decide bid protests arising from procurements under the National Housing Act. Present HUD regulations provide for a dissatisfied bidder to appeal to the GAO; however, if the protest arises under a National Housing Act Contract, the bidder will not receive the benefit of a decision on the merits of the case from GAO. The effect of the current regulations is to deny such bid protesters rights usually available to protesters under other contracts with the Government.

Although protesters may seek relief in the courts, generally court action takes more time and is more expensive than appealing to the GAO, or an administrative tribunal. In addition, it is unclear whether, and to what extent, relief would be available from the courts. The Scanwell doctrine (*Scanwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859 (1970)), affording judicial relief to bid protesters, has not been uniformly accepted by other courts.

In any case, small and minority businesses, which are mainly involved in National Housing Act contracts, could not afford the time and money involved in court action. Thus, an administrative review is essential in order not to eliminate judicial review of Contracting Officers' decisions on bid protests.

The proposed rule will provide the public with a fair and impartial appeal forum, which is consistent with and analogous to administrative review by the GAO, and with established procedures available to contractors dealing with most other Government agencies.

The Department has determined that this proposed rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, Washington, D.C. 20410.

Interested persons may participate in this rulemaking by submitting comments to the Office of the Rules Docket Clerk, at the address listed above. Comments received by January 26, 1979 will be considered in the formulation of a final rule. Copies of all written comments will be available for examination by the public in the Office of the Rules Docket Clerk.

In consideration of the foregoing, 24 CFR Part 20 is proposed to be amended by adding a new Subpart C as follows:

**Subpart C—Bid Protest Procedures for National  
Housing Act Contracts**

Sec.

20.15 Protests Against Award.

20.16 Definitions.

20.17 Filing of Protest.

20.18 Time for filing.

20.19 Notice of protest, submission of procuring activity report and time for filing of comments on report.

20.20 Withholding of Award.

20.21 Furnishing of information protests.

20.22 Time for submission of additional information.

20.23 Decision by HUDBCA.

20.24 Request for reconsideration.

**Subpart C—Bid Protest Procedures for National  
Housing Act Contracts**

**§ 20.15 Protests Against Award.**

The following identifies the responsible agents and sets forth procedural requirements for handling protests regarding the award of National Housing Act Contracts. Protests involving the award of any other procurement or sales contract by the Department of Housing and Urban Development is

governed by the procedures outlined in 41 CFR 24-2.407-8.

**§ 20.16 Definitions.**

(a) "National Housing Act Contract" as used in this Subpart means a contract entered into by the Department of Housing and Urban Development for goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, or sale or other disposition of real and related property conveyed to or otherwise in the custody of the Secretary, including properties held by HUD as mortgagee-in-possession, which are entered into pursuant to the National Housing Act, 12 U.S.C. 1701 et seq., as amended, and regarding which the General Accounting Office will not decide bid protests.

(b) "Days" as used in this Subpart means working days of the Federal Government excluding Saturdays, Sundays, and Federal Holidays as specified in 5 U.S.C. 6103.

(c) The term "file" or "submit" as used in this Subpart refers to the date of transmission except as indicated in §§ 20.18 and 20.19 of this subpart.

(d) "Procuring/Disposal Activity" as used in this Subpart means the Office of Property Disposition in Washington, D.C. for National or other procurements by that office pursuant to the National Housing Act or Area and Service Offices for decentralized or other procurements by those offices pursuant to the National Housing Act.

(e) "Adverse agency action" is any action or inaction on the part of a procuring activity which is prejudicial to the position taken in a protest filed with that procuring activity. Such "adverse agency action" may include but is not limited to: a decision on the merits of the protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or procuring activity acquiescence in or active support of continued and substantial contract performance.

(f) "An interested party" shall mean any person, business, nonprofit or municipal entity which has received a solicitation (Invitation for Bids or Request for Proposals) on the procurement or sale in question.

**§ 20.17 Filing of Protest.**

(a) An interested party may protest the award or proposed award of a National Housing Act Contract for procurement or sale entered into by the Department. Protests must be in writing to the Contracting Officer of the procuring activity, or in writing to the Department of Housing and Urban Development Board of Contract Appeals (hereinafter, "HUDBCA").

(b) Interested parties are urged to seek resolution of their complaints ini-

tially with the Contracting Officer of the procuring activity. The Contracting Officer shall act on any protest filed with the procuring activity unless it is known that a protest has been filed concurrently with the HUDBCA. Where a protest is filed directly with the procuring activity, full consideration shall be given to the protest with the protester notified in writing of the final decision within twenty (20) days from the date of receipt of the protest by the procuring activity.

Where the Contracting Officer makes a determination to award a contract, notwithstanding a protest, such a determination to proceed with award shall be approved by the head of the procuring activity and the Office of General Counsel, after informing the HUDBCA. In such situations, the Office of General Counsel shall complete its review of the proposed award within five (5) working days of notification. In instances of extreme emergency, where the Contracting Officer has determined that award of the contract is required within twenty four (24) hours for the protection of life or for a similar reason, the Office of General Counsel shall complete its review of the proposed award within twenty four (24) hours of notification. Notification in such emergency situations may be by telephone to the General Counsel's designee, provided that the reasons for utilizing the emergency procedure are subsequently submitted in writing. If a decision by the Office of General Counsel is not transmitted to the Contracting Officer within the twenty four hour period, the Contracting Officer may award the contract provided that there has been approval by the head of the procuring activity. If the Office of General Counsel determines that the contract shall not be awarded, a final decision will be arrived at jointly between the General Counsel's designee and the head of the procuring activity.

(c) Protests filed with the HUDBCA must be in writing and addressed to the Department of Housing and Urban Development, Board of Contract Appeals, 451 Seventh Street, S.W., Room 150, Washington, D.C. 20410. To expedite handling within the HUDBCA, the address should include: "Attn: Bid Protest."

(d) The initial protest filed with the HUDBCA shall:

- (1) Include the name and address of the protester;
- (2) Identify the procuring activity and the number of the solicitation and/or contract;
- (3) Contain a statement of the grounds for the protest; and
- (4) Specifically request a ruling by the HUDBCA.

A copy of the protest shall be sent to the Contracting Officer and a copy

shall also be sent to the Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 and the communication to the HUDBCA should so indicate. The grounds for protest filed with the HUDBCA must be fully supported to the extent feasible. See § 20.18(d) of this subpart with respect to time for filing any additional statement required in support of an initial protest.

(e) No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, and direct.

**§ 20.18 Time for filing.**

(a) If a protest has been filed initially with the procuring activity, any subsequent protest to the HUDBCA filed within 10 days of formal notification of, or actual or constructive knowledge of, initial adverse agency action will be considered provided the initial protest to the procuring activity was filed in accordance with the time limits prescribed in paragraph (b) of this Subpart. In any case, a protest will be considered if filed with the HUDBCA within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this Subpart.

(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in subparagraph (b)(1), bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

(3) The term "filed" as used in this section means receipt in the procuring activity or in the HUDBCA, as to case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt. Except as provided in paragraph (c) of this Subpart, any protest received in the HUDBCA after the time limits prescribed in this section shall not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the final date for filing a protest as specified herein. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or

on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of transmission by mailgram shall be the automatic date indication appearing on the mailgram. If the postmark in the case of mail or the automatic date indication in the case of a mailgram is illegible, the protest shall be deemed to have been filed late.

(c) The HUDBCA, for good cause shown, or where it determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely.

(d) If an additional statement in support of the initial protest is required by the HUDBCA, one copy shall be mailed or otherwise furnished to the HUDBCA, a copy shall be mailed or otherwise furnished to the General Counsel and a copy shall be mailed or otherwise furnished to the Contracting Officer of the procuring activity not later than 5 days after receipt of notification from the HUDBCA of the need for such additional statement.

**§ 20.19 Notice of protest, submission of  
procuring activity report, and time for  
filing of comments on report.**

(a) The HUDBCA shall notify the procuring activity and the Office of General Counsel by telephone and in writing within one day of the receipt of a protest, requesting the activity to give notice to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The activity shall be requested to furnish in accordance with applicable procurement regulations copies of the protest documents to such parties with instructions for them to communicate further directly with the HUDBCA.

(b) Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government activity which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the allegedly proprietary information must be so identified wherever it appears.

Although the Government will make every effort to honor the protester's legend in responding to a Freedom of Information Act request for materials covered by the legend, the Government will independently determine whether disclosure of any such material is necessary in light of the requirements of the Freedom of Information



Act and the public interest and the Government will disclose any and all material covered by the protester's legend if the Government determines that such disclosure is required by the Act or the public interest.

(c) The HUDBCA shall request the Office of General Counsel, in conjunction with the procuring activity, to submit a complete report on the protest (hereinafter "procuring activity report") to the HUDBCA as expeditiously as possible (generally within 30 working days) in accordance with applicable procurement regulations and to furnish a copy of the report to the protester and other interested parties. Such report should include:

- (1) A copy of the protest;
- (2) A copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;
- (3) A copy of the invitation for bids, including the specifications or portions thereof, relevant to the protest;
- (4) A copy of the abstract of bids or relevant portions thereof;
- (5) Any other documents which are relevant to the protest; and
- (6) A statement setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the award was made after receipt of the protest, the report will include the determination required.

(d) Comments on the procuring activity report shall be filed with the HUDBCA within 10 days after receipt of the report, with a copy to the Office of General Counsel, the procuring activity, and to other interested parties. Any rebuttal a protester or interested party may care to make shall be filed with the HUDBCA within 5 days after receipt of comments to which rebuttal is directed, with a copy to the Office of General Counsel and the procuring activity, the protester, and interested parties as the case may be. Unsolicited procuring activity rebuttals shall be considered if filed within five (5) days after receipt by the Office of General Counsel and the procuring activity of the comments to which rebuttal is directed.

(e) The failure of a protester or any interested party to comply with the time limits stated in this section may result in resolution of the protest without consideration of the comments untimely filed.

#### § 20.20 Withholding of award.

When a protest has been filed before award, the procuring activity will not

make an award prior to resolution of the protest except under the following circumstances:

- (1) The items or services being procured are urgently required; or
  - (2) Delivery or performance will be unduly delayed by failure to make award promptly; or
  - (3) A prompt award will otherwise be advantageous to the Government.
- If award is made pursuant to (1) through (3) above, the Contracting Officer shall document the file to explain the need for immediate award, and shall give written notice of the decision to proceed with award to the HUDBCA and others concerned. Whenever possible such notice shall be given prior to award. In all cases, the decision to proceed with the award prior to resolution of the protest shall be approved by the head of the procuring activity and the Office of General Counsel. In such situations, Office of General Counsel review shall be subject to the limitations specified in § 20.17(b).

#### § 20.21 Furnishing of information on protests.

The HUDBCA shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by interested parties or procuring activities, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of 10 days.

#### § 20.22 Time for submission of additional information.

Any additional information requested by the HUDBCA from the protester or interested parties shall be submitted no later than 5 days after the receipt of such request. If it is necessary to obtain additional information from the procuring activities, the HUDBCA will request that such information be furnished as expeditiously as possible.

#### § 20.23 Decision by HUDBCA.

(a) The HUDBCA establishes a goal of 25 days for issuing a decision on a protest after receipt of all information submitted by all parties. Decisions by the HUDBCA shall be final and binding on the Department and all parties thereto.

(b) All protests shall be decided upon the written record submitted to the HUDBCA and such additional information as may be requested by the HUDBCA. The HUDBCA will not conduct conferences or hearings in connection with protest actions, except in complex cases at the HUDBCA's discretion.

(c) Decisions rendered by the HUDBCA under these regulations shall include powers to:

- (1) Order improperly awarded contracts to be terminated for the convenience of the Government;
- (2) Prohibit the awarding of a contract;
- (3) Award bid preparation costs to any bidder whose bid has been rejected because of arbitrary or capricious Departmental action or bad faith on the part of the Department and only when such rejection has resulted in the bidder being denied the contract.

#### § 20.24 Request for reconsideration.

(a) Reconsideration of a decision of the HUDBCA may be requested by the protester, any interested party who submitted comments during consideration of the protest and any procuring activity involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Request for reconsideration of a decision of the HUDBCA shall be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this Subpart means receipt in HUDBCA.

(c) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

#### § 20.25 Effect of judicial proceedings.

The HUDBCA may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the HUDBCA's decision.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d); United States Housing Act of 1937 (42 U.S.C. 1437 et seq.))

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 6, 1978.

PATRICIA ROBERTS HARRIS,  
Secretary, Department of  
Housing and Urban Development.

[FR Doc. 78-35691 Filed 12-26-78; 8:45 am]

WEDNESDAY, DECEMBER 27, 1978

## PART III



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

## ENVIRONMENTAL CRITERIA AND STANDARDS

Registered



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 51]

[Docket No. R-78-895]

## Environmental Criteria and Standards

AGENCY: Department of Housing and  
Urban DevelopmentAction: Notice of proposed rulemak-  
ing.SUMMARY: HUD proposes to add a  
new Part 51 to Title 24 of the CFR,  
and includes Subpart A—General Pro-  
visions and Subpart B—Noise Abate-  
ment and Control.Subpart B will establish Depart-  
mental standards, requirements, and  
guidelines on noise abatement and  
control, replacing and revising the  
noise policies, standards and proce-  
dures previously set forth in HUD Cir-  
cular 1390.2, which will be cancelled  
when this proposed regulation be-  
comes effective.DATES: Interested persons may  
submit written data and views to the  
Department by January 26, 1979. Each  
person submitting a comment should  
include name and address and refer to  
the document by the docket number  
indicated in the heading and give rea-  
sons for any recommendations. Com-  
ments will be considered before final  
action if taken on the proposed rule.ADDRESSEES: Comments should be  
submitted to the Rules Docket Clerk,  
Office of the General Counsel, Room  
5218, Department of Housing and  
Urban Development, 451 7th Street,  
S.W. Washington, D.C. 20410. Copies  
of all comments received will be availa-  
ble for examination by interested per-  
sons in the Office of the Rules Docket  
Clerk at the address listed above.FURTHER INFORMATION: For fur-  
ther information contact James F. Miller  
or Louise Thompson, Office of Environ-  
mental Quality, 755-6201.SUPPLEMENTARY INFORMATION:  
The proposed Subpart B represents a  
conversion of the HUD Circular 1390.2 to  
regulation format, changes the noise  
descriptor to be used in applying HUD  
standards, and changes implementing  
procedures to provide more flexibility.  
In addition to publishing the new Sub-  
part, the Department proposes to  
issue a revised "Noise Assessment  
Guidelines" to provide an assessment  
methodology to complement the  
policy and standards.The Department issued an Environ-  
mental Impact Statement for public  
comment in 1971, prior to adoption of  
the interim noise standards. The pro-  
posed regulations do not modify the  
current policy sufficiently so that a  
new Environmental Impact Statement  
would be required. A Finding of Inap-  
plicability has been prepared in ac-  
cordance with the Department's envi-ronmental procedures. A copy of this  
Finding is available for inspection and  
copying in the Office of the Rules  
Docket Clerk at the above address.The Secretary of Housing and Urban  
Development is proposing to issue the  
following regulations.

## Subpart A—General Provisions

- Sec.
- 51.1 Purpose.
- 51.2 Authority.
- 51.3 Responsibilities.
- 51.4 Program Coverage.
- 51.5 Coordination With Environmental  
Clearance Requirements.
- 51.6 (Reserved)

## Subpart B—Noise Abatement and Control

- 51.100 Purpose and Authority.
- 51.101 General Policy.
- 51.102 Responsibilities.
- 51.103 Standards.
- 51.104 Special Requirements.
- 51.105 Exceptions.
- 51.106 Implementation.

## APPENDIX

## Subpart A—General Provision

## § 51.1 Purpose.

The Department of Housing and  
Urban Development is providing pro-  
gram Assistant Secretaries and admin-  
istrators and field offices with envi-  
ronmental standards, criteria and  
guidelines for determining project ac-  
ceptability and necessary mitigating  
measures to insure that activities as-  
sisted by the Department achieve the  
goal of a suitable living environment.

## § 51.2 Authority.

This Part implements the Depart-  
ment's responsibilities under the fol-  
lowing statutes:

(a) The National Housing Act of  
1934 (Pub. L. 73-479) which was en-  
acted "to encourage improvements in  
housing standards and conditions, to  
provide a system of mutual mortgage  
insurance, and for other purposes,"  
thus providing the basis for HUD's  
Minimum Property Standards (MPS)  
which have evolved as required by leg-  
islation over the past 44 years.

(b) The Housing Act of 1949 (Pub. L.  
81-171) which sets forth the national  
goal of "a decent home and a suitable  
living environment for every American  
family," affirmed by the Housing and  
Urban Development Act of 1968 (Pub.  
L. 90-448).

(c) The Department of Housing and  
Urban Development Act of 1965 (Pub.  
L. 89-174) which provides that the  
Secretary may make such rules and  
regulations as may be necessary to  
carry out functions, powers, and  
duties, and sets forth, as a matter of  
national purpose, the sound develop-  
ment of the Nation's communities and  
metropolitan areas.

(d) The National Environmental  
Policy Act of 1969 (Pub. L. 91-190)  
which directs Federal agencies to de-  
velop procedures to carry out the pur-  
poses of the Act.

(e) Intergovernmental Cooperation  
Act of 1968 (Pub. L. 90-577) which,  
under Title IV, directs that Federal  
programs and projects serve the objec-  
tives of appropriate land use for hous-  
ing, commercial, industrial, govern-  
mental, institutional, and other pur-  
poses to achieve sound and orderly de-  
velopment of all areas, both urban and  
rural.

## § 51.3 Responsibilities.

(a) *Assistant Secretary for Commu-  
nity Planning and Development.* The  
Assistant Secretary for Community  
Planning and Development shall be re-  
sponsible for administering environ-  
mental regulations, and shall provide  
oversight, interpretation and guid-  
ance, and shall update the regulations  
as required. The Assistant Secretary  
shall also maintain liaison with other  
Federal agencies on matters of envi-  
ronmental policy implementation.

(b) *Assistant Secretary for Policy De-  
velopment and Research.* The Assist-  
ant Secretary for Policy Development  
and Research shall undertake re-  
search and demonstration studies nec-  
essary for the technical development  
of environmental standards, criteria,  
and implementing techniques as a  
basis for the development and imple-  
mentation of environmental regula-  
tions. The Assistant Secretary shall  
also maintain liaison with Federal  
agencies on related technical matters.

(c) *Other Assistant Secretaries, Ad-  
ministrators, and the General Counsel.*  
Other Assistant Secretaries, Adminis-  
trators, and the General Counsel  
shall:

(1) Incorporate adopted environmen-  
tal regulations by reference into pro-  
gram regulations, guidance documents,  
and administrative forms and proce-  
dures;

(2) Evaluate the effects of, and com-  
pliance with Departmental environ-  
mental regulations policy and report  
significant issues and problems to the  
Assistant Secretary for Community  
Planning and Development; and

(3) Identify program areas under  
their jurisdiction in which additional  
environmental regulations are needed,  
and refer them to the Assistant Sec-  
retary for Community Planning and De-  
velopment.

(d) *Regional Administrators, Area  
Office Managers and Service Office  
Supervisors.* Regional Administrators,  
Area Office Managers and Service  
Office Supervisors shall assure that  
adopted environmental regulations are  
implemented in relation to program  
decisions and recommendations. They  
shall also monitor projects to assure  
that mitigation measures are imple-  
mented.

## § 51.4 Program coverage.

Environmental standards shall apply  
to all HUD actions except where spe-  
cial provisions and exemptions are  
contained in each Subpart.

§ 51.5 Coordination with environmental  
clearance requirements.

Environmental standards shall be  
implemented prior to commitment in  
the decision-making process and,  
where environmental clearances are  
required, the decision points shall be  
identical. Compliance with HUD envi-  
ronmental standards shall be ad-  
dressed in the environmental clear-  
ance process.

## Subpart B—Noise Abatement and Control

## § 51.100 Purpose and authority.

(a) *Purpose.* The Department of  
Housing and Urban Development finds  
that noise is a major source of envi-  
ronmental pollution which represents  
a threat to the serenity and quality of  
life in population centers and that  
noise exposure may be a cause of ad-  
verse physiological and psychological  
effects as well as economic losses.

It is the purpose of this Subpart to:

(1) Call attention to the threat of  
noise pollution;

(2) Encourage the control of noise at  
its source in cooperation with other  
Federal departments and agencies;

(3) Encourage land use patterns for  
housing and other noise sensitive  
urban needs that will provide a suit-  
able juxtaposition between them and  
major noise sources;

(4) Generally prohibit HUD support  
for new construction of noise sensitive  
uses on sites having unacceptable  
noise exposure;

(5) Provide policy on the use of  
structural and other noise attenuation  
measures where needed; and

(6) Provide policy to guide imple-  
mentation of various HUD programs.

(b) *Authority.* Specific authorities  
for noise abatement and control are  
contained in:

(1) The Noise Control Act of 1972  
(Pub. L. 92-574) which directs Federal  
agencies to administer their programs  
in ways which reduce noise pollution.

(2) The General Services Adminis-  
tration, Federal Management Circular  
75-2: *Compatible Land Uses at Federal  
Airfields* prescribes the Executive  
Branch's general policy with respect  
to achieving compatible land uses on  
either public or privately owned prop-  
erty at or in the vicinity of Federal  
airfields.

(3) Section 1113 of the Housing and  
Urban Development Act of 1965 (Pub.  
L. 89-117) directs the Secretary " . . .  
to determine feasible methods of re-  
ducing the economic loss and hard-  
ships suffered by homeowners as a  
result of the depreciation in the value

of their properties following the con-  
struction of airports in the vicinity of  
their homes, including a study of fea-  
sible methods of insulating such  
homes from the noise of aircraft."

## § 51.101 General policy.

(a) It is HUD's general policy to pro-  
vide minimum national standards ap-  
plicable to HUD programs to protect  
citizens against the encroachment of  
noise into their communities and  
places of residence.

(1) *Comprehensive planning assist-  
ance.* HUD requires that grantees give  
adequate consideration to noise expo-  
sures and sources of noise as an inte-  
gral part of the urban environment in  
HUD assisted comprehensive plan-  
ning, as follows:

(i) Particular emphasis shall be  
placed on the importance of compati-  
ble land use planning in relation to  
airports, highways and other sources  
of high noise.

(ii) Applicants shall take into consid-  
eration HUD environmental standards  
impacting the use of land as required  
in 24 CFR Part 600, including the  
noise policy. When there are proposed  
deviations from HUD environmental  
standards, the planning agency shall  
provide a statement so indicating and  
identify and discuss measures to  
achieve conformity and noise impact  
mitigation.

(iii) Reconnaissance studies, and,  
where justifiable, in depth studies for  
noise control and abatement are con-  
sidered allowable costs.

(2) *Community Development Block  
Grants.* Recipients of community de-  
velopment block grants under the  
Housing and Community Development  
Act of 1974 (Pub. L. 93-383), as amend-  
ed by the Housing and Community  
Development Act of 1977 (Pub. L. 95-  
128), must take into consideration the  
noise criteria and standards in the en-  
vironmental review process and consid-  
er ameliorative actions when noise  
sensitive land development is proposed  
in noise exposed areas. Grant recipi-  
ents shall address deviations from the  
standards in their environmental re-  
views as required in 24 CFR Part 58.

Where CDBG activities are planned  
in a noisy area, and HUD assistance is  
contemplated later for housing and/or  
other noise sensitive activities, the  
CDBG grantee risks denial of the  
HUD assistance unless the HUD  
standards are met. Therefore, it is ad-  
visable that CDBG grantees adhere to  
HUD policies. Environmental studies,  
including noise assessments, are allow-  
able costs.

(3) *HUD support for new construc-  
tion.* HUD assistance for the construc-  
tion of new noise sensitive uses is pro-  
hibited generally for projects with Un-  
acceptable noise exposures and is dis-  
couraged for projects with Normally

Unacceptable noise exposure. (Stand-  
ards of acceptability are contained in  
§ 51.103(c).) This policy applies to all  
HUD programs providing assistance,  
subsidy or insurance for housing, col-  
lege housing, mobile home parks, nurs-  
ing homes, hospitals, and all programs  
providing assistance or insurance for  
land development, new communities,  
redevelopment, and the provision of  
facilities and services which are direct-  
ed to making land available for hous-  
ing or noise sensitive development.  
The policy does not apply to research  
demonstration projects which do not  
result in new construction or recon-  
struction, flood insurance, interstate  
land sales registration, or any action  
or emergency assistance under disaster  
assistance programs which are pro-  
vided to save lives, protect property,  
protect public health and safety,  
remove debris and wreckage, or assist-  
ance provided that has the effect of  
restoring facilities substantially as  
they existed prior to the disaster.

(4) *HUD support for existing con-  
struction.* HUD considers environmen-  
tal noise exposure a marketability  
factor in determining the amount of  
insurance and other assistance for  
buildings already constructed; howev-  
er, noise exposure by itself will not  
result in the denial of HUD support  
for the resale and purchase of other-  
wise acceptable existing buildings.  
Buildings already constructed which  
are or have been occupied and which  
are exposed to noise but located in an  
otherwise suitable living environment,  
may be approved for insurance or  
other assistance.

(5) *HUD support of modernization  
and rehabilitation.* For modernization  
projects located in all noise exposed  
areas, HUD shall encourage noise at-  
tenuation features in alterations. For  
major or substantial rehabilitation  
projects in the Normally Unacceptable  
and Unacceptable noise zones, HUD  
actively shall seek to have project  
sponsors incorporate noise attenuation  
features, given the extent and nature  
of the rehabilitation being undertaken,  
and the level or exterior noise expo-  
sure. In Unacceptable noise zones,  
HUD shall strongly encourage conver-  
sion of noise-exposed sites to land uses  
compatible with the high noise levels.

(6) *Other land uses.* Until HUD es-  
tablishes noise exposure levels for  
other uses, land uses not covered by  
this section shall, where feasible, be  
evaluated in a manner consistent with  
the policies contained in this part.

(7) *Research, guidance and publica-  
tions.* HUD shall maintain a continu-  
ing program designed to provide new  
knowledge of noise abatement and  
control to public and private bodies, to  
develop improved methods for antici-  
pating noise encroachment, to develop  
noise abatement measures through



land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(8) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(9) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are Normally Acceptable and are allowable (see Standards in § 51.103(c)).

(10) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation measures are prescribed in § 51.104(a).

(11) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards.

#### § 51.102 Responsibilities.

(a) *Authority to approve projects.* (1) Decisions on proposed projects with Normally Acceptable noise exposures shall be delegated to the program personnel within field offices, including projects where increased noise levels are considered Normally Acceptable because of non-acoustic benefits under § 51.105(a). Field office program personnel may also approve projects in Normally Unacceptable noise exposed

areas where adequate sound attenuation is provided and where the project does not require an Environmental Impact Statement under § 51.104(b).

(2) Other approvals in Normally Unacceptable noise exposed areas require the concurrence of the Regional Administrator.

(3) Requests for approvals of projects with Unacceptable noise exposures shall be referred to the Assistant Secretary for Community Planning and Development for approval pursuant to § 51.104(b).

(4) In cases where the Regional Administrator determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(c) *Notice to applicants.* At the earliest possible stage, HUD program administrators shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(d) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through the Regional Office to the Assistant Secretary for Community Planning and Development or his designee.

(e) *Interdepartmental coordination.* Regional Administrators shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Veterans Administration. HUD staff shall utilize the acceptability standards in commenting on the prospective

impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

#### § 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as  $L_{dn}$ , is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix.

(b) *Loud impulsive sounds.* When loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix). Alternatively, the C-weighted day-night average sound level ( $L_{Cdn}$ ) may be used without the 8 decibel addition, as indicated in Section 51.106(a)(3).

Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix.

(c) *Exterior standards.* The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the building location is undetermined, the standards shall apply at the lot line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in area ancillary to the principal use on the site.

The noise environment inside a building is considered acceptable if (a) the noise environment external to the building complies with these standards, and (b) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

#### SITE ACCEPTABILITY STANDARDS

|                       | Day-Night Average Sound Level (in decibels) | Special Approvals and Requirements                                   |
|-----------------------|---------------------------------------------|----------------------------------------------------------------------|
| Normally Acceptable   | Not exceeding 65 dB(1)                      | None                                                                 |
| Normally Unacceptable | Above 65 dB but not exceeding 75 dB         | Special Approvals (2)<br>Environmental Review (3)<br>Attenuation (4) |
| Unacceptable          | Above 75dB                                  | Special Approvals (2)<br>Environmental Review (3)<br>Attenuation (5) |

NOTES: (1) Normally Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to Section 51.105(a).

(2) See Section 51.104(b) for requirements.

(3) See Section 51.104(b) for requirements.

(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See Section 51.104(a).)

(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

#### § 51.104 Special requirements.

(a) *Noise attenuation.* Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that assist in the reduction of external noise at a site shall be used wherever feasible in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(1) *Normally Unacceptable noise zone.* Approvals in this zone require 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

(2) *Unacceptable noise zone.* Noise attenuation measures require the approval of the Assistant Secretary for Community Planning and Development. (See § 51.104(b)(2).)

(b) *Special Approvals and Environmental Review Requirements.* Environmental clearances shall be conducted pursuant to the requirements of HUD's Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality (38 FR 19182 as amended). The Special Clearance and Environmental Impact Statement (EIS) threshold requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) *Normally Unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require a Special Environmental Clearance except an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD

action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Regional Administrator is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in an Unacceptable Noise Zone shall be submitted through the Regional Administrator to the Assistant Secretary for Community Planning and Development for approval. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outside sensitive activity will take place on the site. In such cases, a Special Environmental Clearance is required.

#### § 51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Normally Acceptable Zone may be shifted to  $L_{dn}$  70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of section 104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth the reasons why noise attenuation measures cannot be accomplished and the reasons are acceptable to HUD.

(6) Other sites which are not exposed to noise above  $L_{dn}$  65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

#### § 51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Composite Noise Rating, abbreviated as CNR, or by Noise Exposure Forecasts, abbreviated as NEF. The noise environment for sites in the vicinity of airports for which day night average sound level data are not available may be evaluated from CNR or NEF analyses using the following conversions to DNL:

DNL7 CNR - 35

DNL7 NEF + 35

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration.

Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (a) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as  $L_{dn}$ ; or (b) the equivalent sound level for the design hour, symbolized as  $L_{eq}$ . The day night average sound level may be estimated from the design hour  $L_{dn}$  or  $L_{eq}$  values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

DNL 7  $L_{dn}$  (design hour) - 3 decibels

DNL 7  $L_{eq}$  (design hour) decibels

(3) *Sites in the vicinity of installations producing loud impulsive*



**sounds.** Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used to establish the acceptability of sites under this standard.

The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized  $L_{C, dn}$ , for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in 51.103(b), is not required, and the same numerical values of day-night average sound level used to determine site suitability for non-impulsive sounds apply to the  $L_{C, dn}$ .

(4) **Use of areawide acoustical data.** HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised data become available for airports (civil or military) and military installations they shall first be referred to the Assistant Secretary for Community Planning and Development for review, evaluation and decision on appropriateness for use by HUD. For other areawide acoustical data, Headquarters review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying source noise assumptions. Requests for Headquarters determination on usage of new areawide data shall be submitted through the Regional Office (Environmental Clearance Officer) and shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for Headquarters approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) **Site assessments.** Compliance with the standards contained in § 51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) **Variations in site noise levels.** In many instances the noise environment will vary across a site, with portions of the site being in a Normally Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in Section 51.103(c) shall apply only to the portions of a building or buildings and ancillary noise sensitive open space that occupy those portions of the site that exceed the limits for an acceptable acoustical environment.

(d) **Noise measurements.** Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominate noise source (see section 103(c)).

(e) **Projections of noise exposure.** To the extent possible, assessments or measurements of noise exposures shall be projected for at least the next 10 years with respect to applications and projects under review.

$$L_{dn} = 10 \log_{10} \left[ \frac{1}{86400} \left( \int_{0000}^{2400} 10^{[L_A(t)+10]/10} dt + \int_{2200}^{2400} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right]$$

Time  $t$  is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds.  $L_A(t)$  is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Sound Level Meters S1.4-1971.

3. **Loud Impulsive Sounds.** When loud impulsive sounds such as sonic booms or explosions are recurring and are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(f) **Reduction of site noise by use of berms and/or barriers.** If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier.

In the environmental review process under Section 51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

#### APPENDIX

##### DEFINITION OF ACOUSTICAL QUANTITIES

1. **Sound Level.** The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Sound Level Meters S1.4-1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 100 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.

2. **Average Sound Level.** Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as  $L_{dn}$  is defined as:

(i) The sound is definable as a discrete event whose loudness audibly increases to a maximum and then decreases in a total time interval of approximately one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a sound level meter whose characteristics comply with ANSI S1.4-1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., November 20, 1978.

JAY JANIS,  
Acting Secretary,  
Department of Housing  
and Urban Development.

(FR Doc. 35692 Filed 12-26-78; 8:45 am)



WEDNESDAY, DECEMBER 27, 1978

PART IV



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**SECURITIES AND  
EXCHANGE  
COMMISSION**

**OIL AND GAS  
PRODUCING ACTIVITIES**

**Financial Accounting and  
Reporting Practices Requirements**

Registered  
Federal  
Property



[8010-01-M]

# Title 17—Commodity and Securities Exchanges

## CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6006; 34-15416; 35-20836;  
IC-10530; AS-257]

### PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

#### Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities

AGENCY: Securities and Exchange  
Commission.

ACTION: Amended rules.

**SUMMARY:** The Commission is adopting various amendments to its accounting and reporting requirements for oil and gas producers. These amendments: (1) increase the conformity of rules relating to the successful efforts method of accounting to the provisions of Statement No. 19 of the Financial Accounting Standards Board; (2) revise certain definitions to correspond to those adopted by the Department of Energy for its Financial Reporting System; (3) provide an exemption from the disclosure requirements for diversified companies who meet specified criteria; and (4) clarify the application of the rules to cost-of-service regulated companies.

**EFFECTIVE DATE:** The rules published in this release shall be effective initially for fiscal years ending after December 25, 1978 that are contained in filings that include fiscal years ending after December 25, 1979. Certain portions are effective for purposes of the disclosure requirements of Regulation S-K for filings that include fiscal years ending after December 25, 1978.

#### FOR FURTHER INFORMATION CONTACT:

James L. Russell, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-0222).

**SUPPLEMENTARY INFORMATION:** In Accounting Series Release No. 253 ("ASR No. 253"), published on August

<sup>1</sup>Securities Act Release No. 33-5966 (43 FR 40688).

31, 1978, the Commission amended Regulation S-X, which governs the form and content of financial statements, to add new § 210.3-18, establishing accounting and disclosure requirements for oil and gas producing companies. These rules apply to filings pursuant to the federal securities laws and to reports of energy information that are subject to the requirements of the Energy Policy and Conservation Act of 1975 ("EPCA"). ASR No. 253 specified the form of successful efforts accounting to be used by companies following that method (a method identical to that contained in Statement of Financial Accounting Standards No. 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies" ("FAS 19"), published in December 1977 by the Financial Accounting Standards Board).

In ASR No. 253, the Commission noted that the rules it was adopting were intended to meet certain objectives, including the following: (1) conformity of the prescribed successful efforts method to the related provisions of FAS 19; (2) consistency with the Financial Reporting System under development by the Department of Energy ("DOE"); and (3) consistency of the revised definition of proved oil and gas reserves with other published definitions. The Commission requested comments as to whether these objectives had been met. In response to comments received on these aspects of the rules, the Commission has determined to make certain technical amendments to the adopted rules.

Further, the Commission has determined it appropriate to add certain exemptive provisions to the rules. These provisions exempt companies whose oil and gas producing activities do not exceed specified criteria from the disclosure requirements of § 210.3-18(k) for purposes of filings under the federal securities laws. This release also clarifies the circumstances under which § 210.3-18 may be deemed not to apply to rate-regulated companies.

Since these amendments are intended simply to dispense with technical inconsistencies in the adopted rules, or to provide limited exemptions from the rules under certain circumstances, and in light of the extensive public rule-making proceeding which led to the adoption of the rules, the Commission has determined that noticing these amendments for comment would be of little or no value. Therefore, the Commission for good cause finds that notice and public procedure on these amendments is unnecessary, as provided by section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)).

#### AMENDMENTS TO THE RULES

A number of technical amendments to § 210.3-18 are being made in response to requests that maximum conformity with the descriptive material and interpretive guidance of FAS 19 be achieved:

The definition of "exploratory well" in § 210.3-18(a)(10) has been revised to include the wording used in FAS 19. In addition, definitions have been provided in § 210.3-18(a) for "acquisitions of properties," "exploration costs," "development costs," and "production costs." These definitions incorporate into the rules a portion of the information that was stated in ASR No. 253 under "Description of the Rules." In particular, the definitions clarify the accounting for the different classifications of costs, and discuss the relationship of production or lifting costs (as well as depreciation, depletion and amortization) to the determination of the inventory cost of oil and gas.

Subparagraph (b)(5) has been added to specify the accounting for reimbursable costs of geological and geophysical studies, as contained in FAS 19.

Subparagraph (c)(3) has been revised to (1) adopt the wording of FAS 19 with respect to aggregation, for purposes of computing amortization, of large numbers of royalty interests whose acquisition costs are not individually significant; (2) include restoration costs among the costs to be considered in determining amortization and depreciation rates; and (3) permit amortization of joint oil and gas production to be based on the dominant mineral.

The phrase "as incurred" has been removed from the heading of paragraph (f). Also, dry hole and bottom hole contributions have been included among the examples of costs to be charged to expense.

Paragraph (g) has been amended to clarify that the accounting standards specifically prohibit "the deferral of costs of exploratory wells that find some oil and gas reserves merely on the chance that some event totally beyond the entity's control will occur."

Subparagraph (k)(5)(xii) now states specifically that the amount at which a receivable related to a retained production payment is recorded should include consideration of imputed interest.

Subparagraph (k)(2) has been modified to require disclosure of gross and net capitalized costs as of the end of each period for which "a complete set of (annual or interim) financial statements is presented," rather than as of the end of each period for which a balance sheet is presented. This will make it consistent with the corresponding requirement of FAS 19.

A discussion of initial retroactive application of the rules, similar to that contained in FAS 19, has been included in this release under "Effective Date."

#### DEFINITION OF PROVED RESERVES

ASR No. 253 adopted the definition of proved oil and gas reserves that was contained in DOE's Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves." A number of comment letters pointed out that this definition differs somewhat from that contained in DOE's Form EIA-28, "Energy Company Financial Reporting System" ("FRS"). Since the FRS is intended to collect information pursuant to EPCA for purposes of developing a national energy data base, most commentators urged that the definition of proved reserves adopted by the Commission conform to that contained in FRS.

Accordingly, the definitions of "proved oil and gas reserves," "proved developed oil and gas reserves," and "proved undeveloped reserves" set forth in § 210.3-18(a) of Regulation S-X have been modified to correspond to those contained in Form EIA-28. Although there does not appear to be any substantive difference between the definitions, this conformity should eliminate any possible ambiguity concerning their use. However, the Commission's definition of proved oil and gas reserves continues to contain a discussion of the term "existing economic and operating conditions," to specify that current prices include consideration of changes in existing prices provided only by contractual arrangements.

Several commentators requested clarification as to whether the "current prices" used in determining estimates of proved reserves (and also in computing estimated future net revenue pursuant to paragraph (k)(5) of § 210.3-18) may incorporate price increases allowed by Federal Energy Regulatory Commission national and area rate opinions or by the Natural Gas Policy Act of 1978, if such price increases have been specifically incorporated into gas contracts. The Commission believes that consideration of such gas price escalations is appropriate only to the extent that amounts are fixed and determinable. Specifically, no recognition should be given to potential price increases related to uncertain events such as an "annual inflation factor."

#### EXEMPTION FROM DISCLOSURE REQUIREMENTS

A number of comment letters included a request that an exemption be provided from the disclosure requirements of § 210.3-18(k) for registrants whose oil and gas producing activities are not significant in relation to their

total operations. The Commission has concluded that such an exemption is appropriate and has amended § 210.3-18(k) to provide an exemption (for filings under the federal securities laws) from the disclosure requirements of that paragraph for registrants whose revenues, income and assets relating to oil and gas producing activities are less than 10 percent of the corresponding consolidated amounts for each of the two most recent fiscal years. For purposes of the asset criterion, proved oil and gas properties are to be measured on the basis of "the present value of estimated future net revenues," rather than historical cost. This exemption does not affect the general applicability of the financial accounting standards of § 210.3-18.

#### APPLICATION OF RULES TO REGULATED COMPANIES

The rules for financial accounting and reporting practices of oil and gas producers adopted in ASR No. 253 did not specifically address the application of those requirements to regulated activities. The addendum to APB Opinion No. 2, "Accounting for the Investment Credit,"<sup>2</sup> states that "differences may arise in the application of generally accepted accounting principles as between regulated and nonregulated businesses, because of the effect in regulated businesses of the rate-making process," and discusses the application of generally accepted accounting principles to regulated businesses. The Commission recognizes that the oil and gas producing activities of some companies may be subject to regulatory requirements for rate-making purposes. Accordingly, the introduction to § 210.3-18 has been amended to specify that, when oil and gas properties are regulated for rate-making purposes on an individual-company-cost-of-service basis, companies may give recognition to the effect of rate-making considerations on costs to be capitalized and on the basis for amortization. However, the Commission intends to reassess this matter upon completion of the Financial Accounting Standards Board's project involving reconsideration of the Addendum to APB Opinion No. 2.

#### INDEXING

The indexing within paragraphs (a)(1), (k)(4), and (k)(5) has been revised to conform to that contained in the FEDERAL REGISTER's publication of ASR No. 253 (43 FR 40688).

#### EFFECTIVE DATE

The rules contained in § 210.3-18 are effective for fiscal years ending after

<sup>2</sup>This opinion was published in December 1962 by the Accounting Principles Board, which then existed as the standard-setting body of the American Institute of Certified Public Accountants.

December 25, 1978, that are contained in filings that include fiscal years ending after December 25, 1979, although earlier application is encouraged. Certain portions of § 210.3-18 are also effective for purposes of the disclosure requirements of Regulation S-K for filings that include fiscal years ending after December 25, 1978.

Accounting changes adopted to conform to the provisions of these rules are to be made retroactively by restating the financial statements of prior periods. Financial statements for the fiscal year in which these rules are first applied should disclose the nature of the accounting changes and their effect on income before extraordinary items, net income, and related per share amounts for each period restated.

Retroactive application of the provisions of § 210.3-18 may require the use of estimates and approximations. A provision that would not have a significant effect on prior years' financial statements need not be retroactively applied. Further, retroactive application of some provisions of these rules may require the use of estimates of a type not previously made; information that may have become available some time after the year being restated may be taken into account in making those estimates, except that estimates of quantities of oil and gas reserves that had been made in prior years need not currently be revised in retrospect.

#### COMMISSION ACTION

The Commissioner hereby amends 17 CFR Part 210 by revising § 210.3-18. This section as amended is set forth below:

§ 210.3-18 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

This section prescribes financial accounting and reporting standards for registrants with the Commission engaged in oil and gas producing activities in filings under the Federal securities laws and for the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States, pursuant to section 503 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6363) ("EPCA") and section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) ("ESECA"), as amended by section 505 of EPCA. The application of this section to those oil and gas producing operations of companies regulated for ratemaking purposes on an individual-company-cost-of-service basis may, however, give appropriate recognition to differences arising be-



cause of the effect of the ratemaking process.

**Exemption.** Any person exempted by the Department of Energy from any record-keeping or reporting requirements pursuant to section 11(c) of ESECA, as amended, is similarly exempted from the related provisions of this section in the preparation of accounts pursuant to EPCA. This exemption does not affect the applicability of this section to filings pursuant to the Federal securities laws.

#### DEFINITIONS

(a) **Definitions.** The following definitions apply to the terms listed below as they are used in this section:

(1) **Oil and gas producing activities.** (i) Such activities include:

(A) The search for crude oil, including condensate and natural gas liquids, or natural gas ("oil and gas") in their natural states and original locations.

(B) The acquisition of property rights or properties for the purpose of further exploration and/or for the purpose of removing the oil or gas from existing reservoirs on those properties.

(C) The construction, drilling and production activities necessary to retrieve oil and gas from its natural reservoirs, and the acquisition, construction, installation, and maintenance of field gathering and storage systems—including lifting the oil and gas to the surface and gathering, treating, field processing (as in the case of processing gas to extract liquid hydrocarbons) and field storage. For purposes of this section, the oil and gas production function shall normally be regarded as terminating at the outlet valve on the lease or field storage tank; if unusual physical or operational circumstances exist, it may be appropriate to regard the production functions as terminating at the first point at which oil, gas, or gas liquids are delivered to a main pipeline, a common carrier, a refinery, or a marine terminal.

(ii) Oil and gas producing activities do not include:

(A) The transporting, refining and marketing of oil and gas.

(B) Activities relating to the production of natural resources other than oil and gas.

(C) The production of geothermal steam or the extraction of hydrocarbons as a by-product of the production of geothermal steam or associated geothermal resources as defined in the Geothermal Steam Act of 1970.

(D) The extraction of hydrocarbons from shale, tar sands, or coal.

(2) **Proved oil and gas reserves.** Proved oil and gas reserves are the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be

recoverable in future years from known reservoirs under existing economic and operating conditions, i.e., prices and costs as of the date the estimate is made. Prices include consideration of changes in existing prices provided only by contractual arrangements, but not on escalations based upon future conditions.

(i) Reservoirs are considered proved if economic producibility is supported by either actual production or conclusive formation test. The area of a reservoir considered proved includes (A) that portion delineated by drilling and defined by gas-oil and/or oil-water contacts, if any, and (B) the immediately adjoining portions not yet drilled, but which can be reasonably judged as economically productive on the basis of available geological and engineering data. In the absence of information on fluid contacts, the lowest known structural occurrence of hydrocarbons controls the lower proved limit of the reservoir.

(ii) Reserves which can be produced economically through application of improved recovery techniques (such as fluid injection) are included in the "proved" classification when successful testing by a pilot project, or the operation of an installed program in the reservoir, provides support for the engineering analysis on which the project or program was based.

(iii) Estimates of proved reserves do not include the following: (A) Oil that may become available from known reservoirs but is classified separately as "indicated additional reserves"; (B) crude oil, natural gas, and natural gas liquids, the recovery of which is subject to reasonable doubt because of uncertainty as to geology, reservoir characteristics, or economic factors; (C) crude oil, natural gas, and natural gas liquids, that may occur in undrilled prospects; and (D) crude oil, natural gas, and natural gas liquids, that may be recovered from oil shales, coal, gilsonite and other such sources.

(3) **Proved developed oil and gas reserves.** Proved developed oil and gas reserves are reserves that can be expected to be recovered through existing wells with existing equipment and operating methods. Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "proved developed reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(4) **Proved undeveloped reserves.** Proved undeveloped oil and gas reserves are reserves that are expected to be recovered from new wells on un-

drilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units that are reasonably certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

(5) **Proved properties.** Properties with proved reserves.

(6) **Unproved properties.** Properties with no proved reserves.

(7) **Proved area.** The part of a property to which proved reserves have been specifically attributed.

(8) **Field.** An area consisting of a single reservoir or multiple reservoirs all grouped on or related to the same individual geological structural feature and/or stratigraphic condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious, strata, or laterally by local geologic barriers, or by both. Reservoirs that are associated by being in overlapping or adjacent fields may be treated as a single or common operational field. The geological terms "structural feature" and "stratigraphic condition" are intended to identify localized geological features as opposed to the broader terms of basins, trends, provinces, plays, areas-of-interest, etc.

(9) **Reservoir.** A porous and permeable underground formation containing a natural accumulation of producible oil and/or gas that is confined by impermeable rock or water barriers and is individual and separate from other reservoirs.

(10) **Exploratory well.** A well drilled to find and produce oil or gas in an unproved area, to find a new reservoir in a field previously found to be productive of oil or gas in another reservoir, or to extend a known reservoir. Generally, an exploratory well is any well that is not a development well, a service well, or a stratigraphic test well as those items are defined below.

(11) **Development well.** A well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

(12) **Service well.** A well drilled or completed for the purpose of supporting production in an existing field. Specific purposes of service wells include gas injection, water injection,

steam injection, air injection, salt-water disposal, water supply for injection, observation, or injection for in-situ combustion.

(13) **Stratigraphic test well.** A drilling effort, geologically directed, to obtain information pertaining to a specific geologic condition. Such wells customarily are drilled without the intention of being completed for hydrocarbon production. This classification also includes tests identified as core tests and all types of expendable holes related to hydrocarbon exploration. Stratigraphic test wells are classified as (i) "exploratory-type," if not drilled in a proved area, or (ii) "development-type," if drilled in a proved area.

(14) **Acquisition of properties.** Costs incurred to purchase, lease or otherwise acquire a property, including costs of lease bonuses and options to purchase or lease properties, the portion of costs applicable to minerals when land including mineral rights is purchased in fee, brokers' fees, recording fees, legal costs, and other costs incurred in acquiring properties.

(15) **Exploration costs.** Costs incurred in identifying areas that may warrant examination and in examining specific areas that are considered to have prospects of containing oil and gas reserves, including costs of drilling exploratory wells and exploratory-type stratigraphic test wells. Exploration costs may be incurred both before acquiring the related property (sometimes referred to in part as prospecting costs) and after acquiring the property. Principal types of exploration costs, which include depreciation and applicable operating costs of support equipment and facilities and other costs of exploration activities, are:

(i) Costs of topographical, geographical and geophysical studies, rights of access to properties to conduct those studies, and salaries and other expenses of geologists, geophysical crews, and others conducting those studies. Collectively, these are sometimes referred to as geological and geophysical or "G&G" costs.

(ii) Costs of carrying and retaining undeveloped properties, such as delay rentals, ad valorem taxes on properties, legal costs for title defense, and the maintenance of land and lease records.

(iii) Dry hole contributions and bottom hole contributions.

(iv) Costs of drilling and equipping exploratory wells.

(v) Costs of drilling exploratory-type stratigraphic test wells.

(16) **Development costs.** Costs incurred to obtain access to proved reserves and to provide facilities for extracting, treating, gathering and storing the oil and gas. More specifically, development costs, including depreci-

ation and applicable operating costs of support equipment and facilities and other costs of development activities, are costs incurred to:

(i) Gain access to and prepare well locations for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building, and relocating public roads, gas lines, and power lines, to the extent necessary in developing the proved reserves.

(ii) Drill and equip development wells, development-type stratigraphic test wells, and service wells, including the costs of platforms and of well equipment such as casing, tubing, pumping equipment, and the wellhead assembly.

(iii) Acquire, construct, and install production facilities such as lease flow lines, separators, treaters, heaters, manifolds, measuring devices, and production storage tanks, natural gas cycling and processing plants, and central utility and waste disposal systems.

(iv) Provide improved recovery systems.

(17) **Production costs.** (i) Costs incurred to operate and maintain wells and related equipment and facilities, including depreciation and applicable operating costs of support equipment and facilities and other costs of operating and maintaining those wells and related equipment and facilities. They become part of the cost of oil and gas produced. Examples of production costs (sometimes called lifting costs) are:

(A) Costs of labor to operate the wells and related equipment and facilities.

(B) Repairs and maintenance.

(C) Materials, supplies, and fuel consumed and supplies utilized in operating the wells and related equipment and facilities.

(D) Property taxes and insurance applicable to proved properties and wells and related equipment and facilities.

(E) Severance taxes.

(ii) Some support equipment or facilities may serve two or more oil and gas producing activities and may also serve transportation, refining, and marketing activities. To the extent that the support equipment and facilities are used in oil and gas producing activities, their depreciation and applicable operating costs become exploration, development or production costs, as appropriate. Depreciation, depletion, and amortization of capitalized acquisition, exploration, and development costs are not production costs but also become part of the cost of oil and gas produced along with production (lifting) costs identified above.

#### SUCCESSFUL EFFORTS METHOD

(b) **Costs to be capitalized if the successful efforts method of accounting is followed.** The costs of the following assets involved in oil and gas producing activities are to be capitalized when incurred:

(1) **Mineral interests in properties.** Including (i) fee ownership or a lease, concession, or other interest representing the right to extract oil or gas subject to such terms as may be imposed by the conveyance of that interest; (ii) royalty interests, production payments payable in oil or gas, and other nonoperating interests in properties operated by others; and (iii) those agreements with foreign governments or authorities under which a reporting entity participates in the operation of the related properties or otherwise serves as "producer" of the underlying reserves (as opposed to being an independent purchaser, broker, dealer, or importer). Properties do not include other supply agreements or contracts that represent the right to purchase, rather than extract, oil and gas.

(2) **Wells and related equipment and facilities.** Including: (i) Costs incurred to drill and equip those exploratory wells and exploratory-type stratigraphic test wells that have found proved reserves and (ii) development costs, i.e., costs incurred to obtain access to proved reserves and provide facilities for extracting, treating, gathering, and storing the oil and gas, including the drilling and equipping of development wells and development-type stratigraphic test wells (whether those wells are successful or unsuccessful) and service wells.

(3) **Support equipment and facilities used in oil and gas producing activities.** Items such as seismic equipment, drilling equipment, construction and grading equipment, vehicles, repair shops, warehouses, supply points, camps, and division, district, or field offices.

(4) **Uncompleted wells, equipment and facilities.** Including costs incurred to: (i) Drill and equip wells that are not yet completed and (ii) acquire or construct equipment and facilities that are not yet completed and installed.

(5) **Geological and geophysical studies.** G&G studies may be conducted on a property owned by another person, in exchange for an interest in the property if proved reserves are found or to be reimbursed if proved reserves are not found. In such cases, the G&G costs shall be accounted for as a receivable when incurred and, if proved reserves are found, they shall become the cost of the proved property acquired.

(c) **Assessment of unproved properties if the successful efforts method of accounting is followed.** Unproved



properties shall be assessed periodically to determine whether they have been impaired. A property would likely be impaired, for example, if a dry hole has been drilled on it and the reporting entity has no firm plans to continue drilling. Also, the likelihood of partial or total impairment of a property increases as the expiration of the lease term approaches if drilling activity has not commenced on the property or on nearby properties. Information that becomes available after the end of the period covered by the financial statements but before those financial statements are issued shall be taken into account in evaluating conditions that existed at the balance sheet date.

(1) If the results of the assessment indicate impairment, a loss shall be recognized by providing a valuation allowance. Impairment of individual unproved properties whose acquisition costs are relatively significant shall be assessed on a property-by-property basis, and an indicated loss shall be recognized by providing a valuation allowance. When a reporting entity has a relatively large number of unproved properties whose acquisition costs are not individually significant, it may not be practical to assess impairment on a property-by-property basis, in which case the amount of loss to be recognized and the amount of the valuation allowance needed to provide for impairment of those properties shall be determined by amortizing those properties, either in the aggregate or by groups, on the basis of the experience of the entity in similar situations and other information about such factors as the primary lease terms of those properties, the average holding period of unproved properties, and the relative proportion of such properties on which proved reserves have been found in the past.

(2) A property shall be reclassified from unproved properties to proved properties when proved reserves are discovered on or otherwise attributed to the property. Occasionally, a single property such as a foreign lease or concession covers so vast an area that only the portion of the property to which the proved reserves relate—determined on the basis of geological structural features or stratigraphic conditions—should be reclassified from unproved to proved. For a property whose impairment has been assessed individually, the net carrying amount (acquisition cost minus valuation allowance) shall be reclassified to proved properties; for properties amortized by providing a valuation allowance on a group basis, the gross acquisition cost shall be reclassified.

(d) *Surrender or abandonment of properties if the successful efforts method of accounting is followed.*

When an unproved property is surrendered, abandoned, or otherwise deemed worthless, capitalized acquisition costs relating thereto shall be charged against the related allowance for impairment to the extent an allowance has been provided; if the allowance previously provided is inadequate, a loss shall be recognized. Normally, no gain or loss shall be recognized if only an individual well or individual item of equipment is abandoned or retired or if only a single lease or other part of a group of proved properties constituting the amortization base is abandoned or retired as long as the remainder of the property or group of properties continues to produce oil or gas. Instead, the asset being abandoned or retired shall be deemed to be fully amortized, and its costs shall be charged to accumulated depreciation, depletion, or amortization. When the last well on an individual property (if that is the amortization base) or group of properties (if amortization is determined on the basis of an aggregation of properties with a common geological structure) ceases to produce and the entire property or property group is abandoned, gain or loss shall be recognized. Occasionally, the partial abandonment or retirement of a proved property or group of proved properties or the abandonment or retirement of wells or related equipment or facilities may result from a catastrophic event or other major abnormality. In those cases, a loss shall be recognized at the time of abandonment or retirement.

(e) *Amortization of capitalized costs if the successful efforts method of accounting is followed.* (1) Capitalized acquisition costs of proved properties shall be amortized using the unit-of-production method on the basis of total estimated units of proved oil and gas reserves.

(2) Capitalized costs of exploratory wells and exploratory-type stratigraphic test wells that have found proved reserves and capitalized development costs shall be amortized (depreciated) using the unit-of-production method on the basis of total estimated units of proved developed reserves. However, it may be more appropriate, in some cases, to depreciate natural gas cycling and processing plants by a method other than the unit-of-production method.

(3) Amortization, using the unit-of-production method as required by subparagraphs (1) and (2) of this paragraph, may be computed either on a property-by-property basis or on the basis of some reasonable aggregation of properties with a common geological structural feature or stratigraphic condition, such as a reservoir or field. When a reporting entity has a relatively large number of royalty inter-

ests whose acquisition costs are not individually significant, they may be aggregated, for purpose of computing amortization, without regard to commonality of geological structural features or stratigraphic conditions; if information is not available to estimate reserve quantities applicable to royalty interests owned, a method other than the unit-of-production method may be used to amortize their acquisition costs. If significant development costs (such as the cost of an off-shore production platform) are incurred in connection with a planned group of development wells before all of the planned wells have been drilled, it will be necessary to exclude a portion of those development costs in determining the unit-of-production amortization rate until the additional development wells are drilled. Similarly, it will be necessary to exclude, in computing the amortization rate, those proved developed reserves that will be produced only after significant additional development costs are incurred, such as for improved recovery systems. However, in no case should future development costs be anticipated in computing the amortization rate. Estimated dismantlement, restoration, and abandonment costs and estimated residual salvage values shall be taken into account in determining amortization and depreciation rates. For those properties or groups of properties containing both oil reserves and gas reserves, the units of oil and gas used to compute amortization shall be converted to a common unit of measure on the basis of their approximate relative energy content (without considering their relative sales values). However, if the relative proportion of gas and oil extracted in the current period is expected to continue throughout the remaining productive life of the property, unit-of-production amortization may be computed on the basis of one of the two minerals only; similarly, if either oil or gas clearly dominates both the reserves and the current production (with dominance determined on the basis of relative energy content), unit-of-production amortization may be computed on the basis of the dominant mineral only. Unit-of-production amortization rates shall be revised whenever there is an indication of the need for revision but at least once a year; those revisions shall be accounted for prospectively as changes in accounting estimates.

(f) *Costs to be charged to expense if the successful efforts method of accounting is followed.* Costs incurred in oil and gas producing activities other than those described in paragraph (b) of this section shall be charged to expense. Examples include geological and geophysical costs, costs of carrying and retaining undeveloped prop-

erties, dry hole and bottom hole contributions, the costs of drilling those exploratory wells and exploratory-type stratigraphic test wells that do not find proved reserves (see paragraph (g) of this section), and the cost of oil and gas produced.

(g) *Accounting for the costs of exploratory wells and exploratory-type stratigraphic test wells if the successful efforts method of accounting is followed.* The costs of drilling exploratory wells and the costs of drilling exploratory-type stratigraphic test wells shall be capitalized as part of the reporting entity's uncompleted wells, equipment, and facilities pending determination of whether the well has found proved reserves. If the well has found proved reserves, the capitalized costs of drilling the well shall become part of the entity's wells and related equipment and facilities (even though the well may not be completed as a producing well); if, however, the well has not found proved reserves, the capitalized costs of drilling the well, net of any salvage value, shall be charged to expense. The determination of whether proved reserves are found is usually made on or shortly after completion of drilling the well, and the capitalized costs shall either be charged to expense or be reclassified as part of the costs of wells and related equipment and facilities at that time. Information that becomes available after the end of the period covered by the financial statements but before those financial statements are issued shall be taken into account in evaluating conditions that existed at the balance sheet date. Occasionally, an exploratory well or an exploratory-type stratigraphic test well may be determined to have found oil and gas reserves, but classification of those reserves as proved cannot be made when drilling is completed. In those cases, one of three subparagraphs set forth below shall apply. Subparagraphs (1) and (2) are intended to prohibit, in all cases, the deferral of the costs of exploratory wells that find some oil and gas reserves merely on the chance that some event totally beyond the entity's control will occur, e.g., on the chance that the selling prices of oil and gas will increase sufficiently to result in classification of reserves as proved that are not commercially recoverable at current prices.

(1) Exploratory wells that find oil and gas reserves in an area requiring a major capital expenditure, such as a trunk pipeline, before production could begin. On completion of drilling, an exploratory well may be determined to have found oil and gas reserves, but classification of those reserves as proved depends on whether a major capital expenditure can be justified which, in turn, depends on wheth-

er additional exploratory wells find a sufficient quantity of additional reserves. In that case, the cost of drilling the exploratory well shall continue to be carried as an asset pending determination of whether proved reserves have been found only as long as both of the following conditions are met: (i) The well has found a sufficient quantity of reserves to justify its completion as a producing well if the required capital expenditure is made, and (ii) drilling of the additional exploratory wells is under way or firmly planned for the near future. Otherwise, the exploratory well shall be assumed to be impaired, and its costs shall be charged to expense.

(2) All other exploratory wells that find oil and gas reserves. In the absence of a determination as to whether the reserves that have been found can be classified as proved, the costs of drilling such an exploratory well shall not be carried as an asset for more than one year following completion of drilling. If, after that year has passed, a determination that proved reserves have been found cannot be made, the well shall be assumed to be impaired, and its costs shall be charged to expense.

(3) Exploratory-type stratigraphic test wells that find oil and gas reserves. On completion of drilling, such a well may be determined to have found oil and gas reserves, but classification of those reserves as proved depends on whether a major capital expenditure (usually a production platform) can be justified which, in turn, depends on whether additional exploratory-type stratigraphic test wells find a sufficient quantity of additional reserves. In that case, the cost of drilling the exploratory-type stratigraphic test well shall continue to be carried as an asset pending determination of whether proved reserves have been found only as long as both of the following conditions are met: (i) The well has found a quantity of reserves that would justify its completion for production had it not been simply a stratigraphic test well, and (ii) drilling of the additional exploratory-type stratigraphic test wells is under way or firmly planned for the near future. Otherwise, the exploratory-type stratigraphic test well shall be assumed to be impaired, and its costs shall be charged to expense.

(h) *Mineral property conveyances and related transactions if the successful efforts method of accounting is followed.* (1) Certain transactions, sometimes referred to as conveyances, are in substance borrowings repayable in cash or its equivalent and shall be accounted for as borrowings. The following are examples of such transactions:

(i) Entities seeking supplies of oil or gas sometimes make cash advances to

operators to finance exploration in return for the right to purchase oil or gas discovered. Funds advanced for exploration that are repayable by offset against purchases of oil or gas discovered, or in cash if insufficient oil or gas is produced by a specified date, shall be accounted for as a receivable by the lender and as a payable by the operator.

(ii) Funds advanced to an operator that are repayable in cash out of the proceeds from a specified share of future production of a producing property, until the amount advanced plus interest at a specified or determinable rate is paid in full, shall be accounted for as a borrowing. The advance is a payable for the recipient of the cash and a receivable for the party making the advance. Such transactions, as well as those described in subparagraph (5)(i) of this paragraph, are commonly referred to as production payments. The two types differ in substance, however, as explained in subparagraph (5)(i) of this paragraph.

(2) In the following types of conveyances, gain or loss shall not be recognized at the time of conveyance:

(i) A transfer of assets used in oil and gas producing activities (including both proved and unproved properties) in exchange for other assets also used in oil and gas producing activities.

(ii) A pooling of assets in a joint undertaking intended to find, develop, or produce oil or gas from a particular property or group of properties.

(3) In the following types of conveyances, gain shall not be recognized at the time of the conveyance:

(i) A part of an interest owned is sold and substantial uncertainty exists about recovery of the costs applicable to the retained interest.

(ii) A part of an interest owned is sold and the seller has a substantial obligation for future performance, such as an obligation to drill a well or to operate the property without proportional reimbursement for that portion of the drilling or operating costs applicable to the interest sold.

(4) If a conveyance is not one of the types described in subparagraphs (2) and (3) of this paragraph, gain or loss shall be recognized unless there are other aspects of the transaction that would prohibit such recognition under accounting principles applicable to enterprises in general.

(5) In accordance with subparagraphs (2) through (4) of this paragraph, the following types of transactions shall be accounted for as indicated in each example. No attempt has been made to include the many variations of those arrangements that occur, but subparagraphs (2) through (4) of this paragraph shall, where applicable, determine the accounting for those other arrangements as well.



(i) Some production payments differ from those described in subparagraph (1)(ii) of this paragraph in that the seller's obligation is not expressed in monetary terms but as an obligation to deliver, free and clear of all expenses associated with operation of the property, a specified quantity of oil or gas to the purchaser out of a specified share of future production. Such a transaction is a sale of a mineral interest for which gain shall not be recognized because the seller has a substantial obligation for future performance. The seller shall account for the funds received as unearned revenue to be recognized as the oil or gas is delivered. The purchaser of such a production payment has acquired an interest in a mineral property that shall be recorded at cost and amortized by the unit-of-production method as delivery takes place. The estimated oil or gas reserves and production data shall be reported, in accordance with paragraph (k) of this section, as those of the purchaser of the production payment and not of the seller.

(ii) An assignment of the operating interest in an unproved property with retention of a nonoperating interest in return for drilling, development and operation by the assignee is a pooling of assets in a joint undertaking for which the assignor shall not recognize gain or loss. The assignor's cost of the original interest shall become the cost of the interest retained. The assignee shall account for all costs incurred as specified by paragraphs (b) through (g) of this section and shall allocate none of those costs to the mineral interest acquired. If oil or gas is discovered, each party shall report its share of oil and gas reserves and production, in accordance with paragraph (k) of this section.

(iii) An assignment of a part of an operating interest in an unproved property in exchange for a "free well" with provision for joint ownership and operation is a pooling of assets in a joint undertaking by the parties. The assigner shall record no cost for the obligatory well; the assignee shall record no cost for the mineral interest acquired. All drilling, development, and operating costs incurred by either party shall be accounted for as provided in paragraphs (b) through (g) of this section. If the conveyance agreement requires the assignee to incur geological or geophysical expenditures instead of, or in addition to, a drilling obligation, those costs shall likewise be accounted for by the assignee as provided in paragraphs (b) through (g) of this section. If reserves are discovered, each party shall report its share of reserves and production, in accordance with paragraph (k) of this section.

(iv) A part of an operating interest in an unproved property may be assigned to effect an arrangement called a "carried interest" whereby the assignee (the carrying party) agrees to defray all costs of drilling, developing, and operating the property and is entitled to all of the revenue from production from the property, excluding any third party interest, until all of the assignee's costs have been recovered, after which the assignor will share in both costs and production. Such an arrangement represents a pooling of assets in a joint undertaking by the assignor and assignee. The carried party shall make no accounting for any costs and revenue until after recoupment (payout) of the carried costs by the carrying party. Subsequent to payout the carried party shall account for its share of revenue, operating expenses, and (if the agreement provides for subsequent sharing of costs rather than a carried interest) subsequent development costs. During the payout period the carrying party shall record all costs, including those carried, as provided in paragraphs (b) through (g) of this section, and shall record all revenue from the property including that applicable to the recovery of cost carried. The carried party shall report as oil or gas reserves, in accordance with paragraph (k) of this section, only its share of proved reserves estimated to remain after payout, and unit-of-production amortization of the carried party's property cost shall not commence prior to payout. Prior to payout the carrying party's reserve estimates and production data, reported in accordance with paragraph (k) of this section, shall include the quantities applicable to recoupment of the carried costs.

(v) A part of an operating interest owned may be exchanged for a part of an operating interest owned by another party. The purpose of such an arrangement, commonly called a joint venture in the oil and gas industry, often is to avoid duplication of facilities, diversify risks, and achieve operating efficiencies. Such reciprocal conveyances represent exchanges of similar productive assets, and no gain or loss shall be recognized by either party at the time of the transaction. In some joint ventures which may or may not involve an exchange of interests, the parties may share different elements of costs in different proportions. In such an arrangement a party may acquire an interest in a property or in wells and related equipment that is disproportionate to the share of costs borne by it. As in the case of a carried interest or a free well, each party shall account for its own cost under the provisions of this section. No gain shall be recognized for the acquisition of an interest in joint assets,

the cost of which may have been paid in whole or in part by another party.

(vi) In a unitization all of the operating and nonoperating participants pool their assets in a producing area (normally a field) to form a single unit and in return receive an undivided interest (of the same type as previously held) in that unit. Unitizations generally are undertaken to obtain operating efficiencies and to enhance recovery of reserves, often through improved recovery operations. Participation in the unit is generally proportionate to the oil and gas reserves contributed by each. Because the properties may be in different stages of development at the time of unitization, some participants may pay cash and others may receive cash to equalize contributions of wells and related equipment and facilities with the ownership interests in reserves. In those circumstances, cash paid by a participant shall be recorded as an additional investment in wells and related equipment and facilities, and cash received by a participant shall be recorded as a recovery of cost. The cost of the assets contributed plus or minus cash paid or received is the cost of the participant's undivided interest in the assets of the unit. Each participant shall include its interest in reporting reserve estimates and production data.

(vii) If the entire interest in an unproved property is sold for cash or cash equivalent, recognition of gain or loss depends on whether, in applying paragraph (c) of this section, impairment had been assessed for that property individually, or by amortizing that property as part of a group. If impairment was assessed individually, gain or loss shall be recognized. For a property amortized by providing a valuation allowance on a group basis, neither gain nor loss shall be recognized when an unproved property is sold unless the sales price exceeds the original cost of the property, in which case gain shall be recognized in the amount of such excess.

(viii) If a part of the interest in an unproved property is sold, even though for cash or cash equivalent, substantial uncertainty usually exists as to recovery of the cost applicable to the interest retained. Consequently, the amount received shall be treated as a recovery of cost. However, if the sales price exceeds the carrying amount of a property whose impairment has been assessed individually in accordance with paragraph (c) of this section, or exceeds the original cost of a property amortized by providing a valuation allowance on a group basis, gain shall be recognized in the amount of such excess.

(ix) The sale of an entire interest in a proved property that constitutes a separate amortization base is not one

of the types of conveyances described in paragraphs (h)(2) and (h)(3) of this section. The difference between the amount of sales proceeds and the unamortized cost shall be recognized as a gain or loss.

(x) The sale of a part of a proved property, or of an entire proved property constituting a part of an amortization base, shall be accounted for as the sale of an asset, and a gain or loss shall be recognized, since it is not one of the conveyances described in paragraphs (h)(2) and (h)(3) of this section. The unamortized cost of the property or group of properties a part of which was sold shall be apportioned to the interest sold and the interest retained on the basis of the fair values of those interests. However, the sale may be accounted for as a normal retirement under the provisions of paragraph (d) of this section with no gain or loss recognized if doing so does not significantly affect the unit-of-production amortization rate.

(xi) The sale of the operating interest in a proved property for cash with retention of a nonoperating interest is not one of the types of conveyances described in paragraphs (h)(2) and (h)(3) of this section. Accordingly, it shall be accounted for as the sale of an asset, and any gain or loss shall be recognized. The seller shall allocate the cost of the proved property to the operating interest sold and the nonoperating interest retained on the basis of the fair values of those interests.

(xii) The sale of a proved property subject to a retained production payment that is expressed as a fixed sum of money payable only from a specified share of production from that property, with the purchaser of the property obligated to incur the future costs of operating the property, shall be accounted for as follows: If satisfaction of the retained production payment is reasonably assured, the seller of the property, who retained the production payment, shall record the transaction as a sale, with recognition of any resulting gain or loss. The retained production payment shall be recorded as a receivable, at an amount reflecting appropriate consideration of imputed interest thereon. The purchaser shall record as the cost of the assets acquired the cash consideration paid plus the present value of the retained production payment, which shall be recorded as a payable. The oil and gas reserve estimates and production data, including those applicable to liquidation of the retained production payment, shall be reported by the purchaser of the property. If satisfaction of the retained production payment is not reasonably assured, the transaction is in substance a sale with retention of an overriding royalty that shall be accounted for in accordance with

subparagraph (5)(xi) of this paragraph.

(xiii) The sale of a proved property subject to a retained production payment that is expressed as a right to a specified quantity of oil or gas out of a specified share of future production shall be accounted for in accordance with subparagraph (5)(xi) of this paragraph.

#### FULL COST METHOD

(Provisions of paragraph (i) are contained in Accounting Series Release No. 258 dated December 19, 1978.)

#### INCOME TAXES

(j) *Income taxes.* Comprehensive interperiod income tax allocation by the deferred method shall be followed for intangible drilling and development costs and other costs incurred that enter into the determination of taxable income and pretax accounting income in different periods. The excess of statutory depletion over cost depletion for income tax purposes shall be accounted for as a permanent difference in the period in which the excess is deducted for income tax purposes.

#### DISCLOSURE REQUIREMENTS

(k) *Disclosure of quantities of proved oil and gas reserves and historical financial data.* The following data shall be disclosed in the body of the financial statements, in the notes thereto, or in a separate schedule or other presentation that is an integral part of the financial statements.

*Exemption.* This paragraph shall not apply to filings under the federal securities laws by any registrant meeting all of the conditions described below for each of the two most recent fiscal years, based on its annual consolidated financial statements:

(i) Gross revenues from sales or transfers of oil and gas (as defined in subparagraph (4)(ii) of this paragraph) do not exceed 10 percent of total revenues;

(ii) Income after taxes (but before extraordinary items) from oil and gas producing activities, including amounts applicable to investees accounted for under the equity method, does not exceed 10 percent of consolidated income before extraordinary items; and

(iii) The "Present Value of Estimated Future Net Revenues" (see subparagraph (6)(ii) of this paragraph), including amounts attributable to investees accounted for under the equity method, plus the net capitalized costs

of unproved properties, do not exceed 10 percent of total assets.

(1) *Disclosure of method of accounting.* The reporting entity shall disclose on the face of its balance sheet that it is adhering to the successful efforts method of accounting or the full cost method of accounting.

(2) *Disclosure of capitalized costs.* The aggregate amount of capitalized costs relating to oil and gas producing activities and the aggregate amount of the related accumulated depreciation, depletion, amortization, and valuation allowances shall be reported as of the end of each period for which a complete set of (annual or interim) financial statements is presented, with separate presentation for each geographic area for which quantities of proved reserves are presented in accordance with paragraph (k)(5) of this section. If the capitalized costs of unproved properties are significant, aggregate amounts shall be reported separately for capitalized costs related to unproved properties and capitalized costs related to proved properties. Capitalized costs of support equipment and facilities may be disclosed separately or included, as appropriate, with capitalized costs of proved and unproved properties.

(3) *Disclosure of costs incurred in oil and gas producing activities.* The financial statements shall disclose the amounts of each of the following types of costs for each year for which an income statement is required (whether those costs are capitalized or charged to expense at the time they are incurred):

- (i) Property acquisition costs (disclose separately the costs of acquiring proved properties, if significant).
- (ii) Exploration costs.
- (iii) Development costs.
- (iv) Production (lifting) costs.

Exploration, development, and production costs include depreciation of support equipment and facilities used in those activities rather than the expenditures to acquire support equipment and facilities. Production (lifting) costs do not include depreciation, depletion, and amortization of capitalized acquisition, exploration, and development costs. If some or all of those costs are incurred in foreign countries, the amounts shall be disclosed separately for each of the geographic areas for which reserve quantities are disclosed in accordance with paragraph (k)(5) of this section and for any other foreign geographic area in which significant costs have been incurred without discovery of significant proved reserves. Also, disclose the aggregate amount of depreciation, depletion, amortization, and valuation provisions relating to oil and gas producing activities, presented separately for each of these geographic areas. If



the reporting entity's share of the oil and gas reserves of its investee companies accounted for by the equity method is reported in conformity with paragraph (k)(5) of this section, disclosure shall also be made of the investor's share of its investee's capitalized costs and costs incurred in oil and gas producing activities.

(4) *Revenues from producing oil and gas.* (i) For each full fiscal year for which an income statement is required, disclose, for each geographic area for which reserve quantities are disclosed in accordance with paragraph (k)(5) of this section, the net revenues from oil and gas production related to each of the following, if significant: (A) Proved developed oil and gas reserves, (B) reserves applicable to long-term supply or similar agreements with foreign governments in which the entity acts as producer (see paragraph (k)(5) of this section), and (C) the entity's proportional interest in reserves of investees accounted for by the equity method.

(ii) Net revenues shall be computed by subtracting production (lifting) costs from gross revenues that are determined in accordance with the provisions of this subparagraph, as presented below. The following accounting practices shall be applied in determining gross revenues from sales or transfers of production of oil and gas:

(A) Sales to unaffiliated entities shall be included in gross revenues at the amount received in sales transactions attributable to net working interests, royalty interests, oil payments interests (see paragraph (h) of this section), net profits interests, etc., of the reporting entity. Production or severance taxes should not be deducted in determining gross revenues. Royalty payments and net profits disbursements should be excluded from gross revenues.

(B) Sales and transfers to unconsolidated affiliated persons and to other operations (such as refineries, chemical plants, etc.) of the reporting entity shall be separately disclosed and accounted for in the same manner as described in subparagraph (4)(i)(A) of this paragraph except that such sales and transfers shall be valued at estimated market prices based on the prices of comparable products using posted field prices, if applicable, or amounts estimated to represent prices equivalent to those that could be obtained in a competitive arm's-length market environment, giving recognition to transportation costs, quality differences, and arrangements with and regulation by governments.

(5) *Disclosure of estimated quantities of proved oil and gas reserves.* Net quantities of proved reserves and proved developed reserves of crude oil (including condensate and natural gas

liquids) and natural gas shall be reported as of the beginning and the end of each fiscal year for which an income statement is required. "Net" quantities of reserves include those relating to the operating and non-operating interests in properties as defined in paragraph (b)(1) of this section. Quantities of reserves relating to royalty interests owned shall be included in "net" quantities if the necessary information is available; if reserves relating to royalty interests owned are not included because the information is unavailable, that fact and the reporting entity's share of oil and gas produced for those royalty interests shall be reported for each year for which a complete set of financial statements is presented. "Net" quantities shall not include reserves relating to interests of others in properties owned by the reporting entity.

(i) Changes in the net quantities of proved reserves of oil and of gas during each fiscal year for which an income statement is required shall be reported. Changes resulting from each of the following shall be shown separately, with appropriate explanation of significant changes:

(A) *Revisions of previous estimates.* Revisions represent changes in previous estimates of proved reserves, either upward or downward, resulting from new information (except for an increase in proved acreage) normally obtained from development drilling and production history or resulting from a change in economic factors.

(B) *Improved recovery.* Changes in reserve estimates resulting from application of improved recovery techniques shall be separately shown if significant. If not significant, such changes shall be included in revisions of previous estimates.

(C) *Purchases of minerals in-place.*

(D) *Extensions, discoveries, and other additions.* Additions to proved reserves that result from extension of the proved acreage of previously discovered (old) reservoirs through additional drilling in periods subsequent to discovery and discovery of new fields with proved reserves or of new reservoirs of proved reserves in old fields.

(E) *Production.*

(F) *Sales of minerals in-place.*

(ii) If the reporting entity's proved reserves of oil and gas are located entirely within its home country, that fact shall be disclosed. If some or all of its reserves are located in foreign countries, the disclosures of net quantities of reserves of oil and gas and changes in them (as required above) shall be separately reported for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant reserves are located. Foreign geographic areas are individual coun-

tries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

(iii) Net quantities disclosed shall not include oil or gas subject to purchase under long-term supply, purchase, or similar agreements and contracts, including such agreements with foreign governments or authorities. However, quantities of oil and gas subject to such agreements with foreign governments or authorities as of the end of each fiscal year for which an income statement is required, and the net quantity of oil or gas received under the agreements during each such year, shall be separately disclosed if the reporting entity participates in the operation of the properties in which the oil or gas is located or otherwise serves as the "producer" of those reserves, as opposed, for example, to being an independent purchaser, broker, dealer, or importer.

(iv) In determining the reserve quantities to be reported:

(A) If consolidated financial statements are issued, 100 percent of the net reserve quantities attributable to the parent company and 100 percent of the net reserve quantities attributable to its consolidated subsidiaries (whether or not wholly owned) shall be included.

(B) If the financial statements include investments that are proportionately consolidated, reserve quantities shall include a proportionate share of the investee's net oil and gas reserves.

(C) If the financial statements include investments that are accounted for by the equity method, the investee's net proved oil and gas reserves shall not be included in the disclosures of reserves. However, the reporting entity's share of the investee's net proved oil and gas reserves shall be separately reported as of the end of each fiscal year for which an income statement is required.

(v) If important economic factors or significant uncertainties affect particular components of proved reserves, explanations shall be provided. Examples include unusually high expected development or lifting costs; the necessity to build a major pipeline or other major facilities before production of the reserves can begin; or contractual obligations to produce and sell a significant portion of reserves at prices that are substantially below those at which the oil and gas could otherwise be sold in the absence of the contractual obligation.

(vi) In reporting reserve quantities and changes in them, oil reserves (which include condensate and natural gas liquids) shall be stated in barrels, and gas reserves in cubic feet.

(6) *Disclosure of future net revenues from estimated production of proved oil and gas reserves.* In conjunction

with the disclosure of changes in net quantities of estimated proved reserves of crude oil (including condensate and natural gas liquids) and natural gas as required by paragraph (k)(5) of this section, the following information shall be disclosed in financial statements for each geographic classification for which quantities of oil and gas are disclosed:

(i) For each of the following categories: (A) Proved oil and gas reserves, (B) proved developed oil and gas reserves, (C) proved oil and gas applicable to long-term supply or similar agreements with foreign governments in which the entity acts as producer, and (D) the entity's share of proved oil and gas reserves of investees accounted for by the equity method, an amount (the "Estimated Future Net Revenues"), in the aggregate, computed by applying current prices of oil and gas (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production of proved oil and gas reserves as of the date of the latest balance sheet presented, less estimated future expenditures (based on current costs) to be incurred in developing and producing the proved reserves, and assuming continuation of existing economic conditions. Present separately the amounts applicable to each of the first three succeeding fiscal years, and the remainder in a single amount. Indicate the basis used to compute current prices and current costs.

(ii) The present value of the Estimated Future Net Revenues (the "Present Value of Estimated Future Net Revenues"), as of the end of each fiscal year for which an income statement is required, computed using the Estimated Future Net Revenues and a discount factor of ten percent. In addition, disclose the portions of the Present Value of Estimated Future Net Revenues, at such balance sheet dates, attributable to each of the following components of proved oil and gas reserves: (A) Proved reserves added in years prior to the current year; and (B) proved reserves added during the current year, with amounts attributable to application of improved recovery techniques or purchases of reserves in-place disclosed separately, if significant (which in this case shall generally be considered to be amounts greater than ten percent of total proved reserves added during the current year).

(iii) The Present Value of Estimated Future Net Revenues, computed as set forth at paragraph (k)(6)(i) of this section, attributable to each of the following, stated separately: (A) Proved developed reserves of oil and gas, (B) proved reserves of oil and gas applicable to long-term supply agreements

with foreign governments in which the entity acts as producer, and (C) the entity's share of proved reserves of oil and gas of investees accounted for by the equity method.

(iv) Any additional information of which management is aware and which it believes is necessary to prevent the above information from being misleading.

(v) Information relating to the disclosure of future net revenues from estimated production of proved oil and gas reserves pursuant or supplemental to the requirements of this section shall be deemed not to be an untrue statement of a material fact; a statement false or misleading with respect to any material fact; an omission to state a material fact necessary to make a statement not misleading; or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or an artifice to defraud; as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935, or rules and regulations thereunder, unless such information: (A) Was prepared without a reasonable basis; or (B) was disclosed other than in good faith.

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w), of the Securities Exchange Act of 1934; sections 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940; and section 503 (42 U.S.C. 6383) of the Energy Policy and Conservation Act of 1975.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition.

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

DECEMBER 19, 1978.

(FR Doc. 78-35867 Filed 12-26-78; 8:45 am)

[8010-01-M]

(Release Nos. 33-6007; 34-15417; 35-20837; IC-10531; AS-258)

**PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

**Oil and Gas Producers—Full Cost Accounting Practices**

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules that establish uniform requirements for financial accounting and reporting practices of oil and gas producers following the full cost method of accounting. The Commission has previously published, in Accounting Series Release No. 253, accounting measurement standards for the successful efforts method of accounting. Proposed rules for full cost accounting were published concurrently with that release. The rules being adopted contain modifications based upon evaluation of written comments.

EFFECTIVE DATE: The rules published in this release shall be effective initially for fiscal years ending after December 25, 1979.

FOR FURTHER INFORMATION CONTACT:

James L. Russell or Rita J. Gunter, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-0222).

SUPPLEMENTARY INFORMATION: In Accounting Series Release No. 253 ("ASR No. 253"), issued on August 31, 1978, the Commission announced its conclusions concerning financial accounting and reporting standards for oil and gas producing companies. Among these was the determination that the development of new measurement standards was necessary in order to achieve meaningful reporting of earnings and financial position for companies in that industry. These new standards should provide for recognition in financial statements of proved oil and gas reserves as assets and changes in proved reserves in earnings. In consideration of the need to establish standards for reserve valuations and to achieve an acceptable degree of

<sup>1</sup> Securities Act Release No. 33-5966 (43 FR 40688).



reliability, a series of steps covering several years was outlined seeking the development of "reserve recognition accounting." During this interim period, the Commission concluded that companies should be permitted to continue to follow either of the two traditional historical-cost accounting methods. Rules relating to the application of successful efforts accounting (which conformed to the standards of Statement No. 19 of the Financial Accounting Standards Board) were adopted in ASR No. 253, together with definitions, tax accounting standards, and disclosure requirements applicable to all oil and gas producers.<sup>4</sup> Proposed rules that would add §210.3-18(i) to Regulation S-X to govern the application of full cost accounting for companies following that method were published concurrently in Release No. 33-5968 (43 FR 40724), August 31, 1978.

In that release, the Commission stated that its intention was to develop a practical approach for applying the full cost method of accounting that would be logically consistent and would not differ substantially from existing practice. Comments on the proposal were received from 48 persons, including oil and gas producers, accounting firms, and financial analysts. These comments have been considered by the Commission and various changes are reflected in the rules presently being adopted.

#### COMMENTS AND CHANGES

##### COSTS TO BE AMORTIZED

Most letters commenting on the rules proposed in Release No. 33-5968 addressed the issue of whether all capitalized costs should be subject to immediate amortization. It was generally acknowledged that companies with ongoing exploration programs typically have a recurring level of preproduction costs (in relation to the total investment in the cost center), consisting of the cost of undeveloped leases and the related carrying and evaluation costs. This normal inventory of preproduction costs should be included in the cost center for amortization purposes as the costs are incurred, and any additional reserves should be taken into consideration upon discovery on a prospective basis. This method of accounting should result in a reasonable and consistent allocation of costs over a period of time.

However, there was general disagreement with the proposed requirement that the capitalized costs of all undeveloped leases and uncompleted wells and facilities be amortized. It was pointed out that situations may arise

<sup>4</sup>Various technical amendments to these definitions and rules have been adopted by the Commission in Accounting Series Release No. 257, dated December 19, 1978 and published concurrently with this release.

in which major expenditures are required prior to production, such as unusually large investments in off-shore leases, major development projects, or secondary and tertiary recovery projects. While previous methods of determining the exclusion of costs from the amortization base have varied among companies, the principle of excluding major costs of this nature was felt by these commentators to be generally accepted. Failure to exclude such costs, it was argued, would result in an unrealistic overstatement of the amortization provision in the early lives of the properties. Exclusion from the amortization base was further supported by the assertion that costs incurred should be considered to be at least equal to the value of the asset at the time of the initial investment. Although certain projects will ultimately be abandoned, it was argued that impairments should be recognized when they occur, and should not be anticipated by premature amortization of the costs. Costs of projects that ultimately prove to be productive should become subject to amortization at the time that this evaluation is determined and the related proved reserves are included in the amortization base.

The Commission considers these arguments to have merit and has modified the rules to provide that the costs of unusually significant acquisitions of unproved properties and major development projects may be excluded from the capitalized costs to be amortized. Specifically, amortization of the costs of unproved properties that are unusually significant (such as the costs of acquiring and evaluating major offshore leases) may be deferred until a determination is made as to whether proved reserves are attributable to the properties, subject to periodic assessment of whether impairment has occurred. Also, the costs of major development projects may be excluded from amortization in cases where unusually significant costs must be incurred prior to a determination of the quantities of proved reserves attributable to the properties under development. Examples of such projects include the installation of an offshore drilling platform from which development wells are to be drilled and improved recovery programs undertaken in expectation of significant additions to proved reserves.

Because of the various judgments involved in assessing significance, the rules do not contain a specific test to determine whether an investment is "unusually significant." However, the Commission has instructed its staff to investigate existing practices and determine whether it is necessary to publish a guideline in this area, such as the percentage of total unamortized capitalized costs that must be exceed-

ed if a major investment project is to be excluded from amortization. It should also be noted that the rules require separate disclosure on the balance sheet of the amount of preproduction costs that are not being amortized and a description of the current status of the projects involved, including an estimate of when the costs will be included in the amortization computation and, to the extent possible, the potential future impact on the amortization rate.

Several commentators questioned the appropriateness of including estimated future development costs in the costs to be amortized, since additions to proved reserves could be expected from major development expenditures that would not be reflected in the amortization computation. The Commission believes that future development costs should be included; the exclusion of the costs of major development projects from the amortization base until reserves can be evaluated should eliminate situations where an inappropriate allocation of costs to current production would result.

##### BASIS OF AMORTIZATION

Release No. 33-5968 proposed that unit-of-production amortization of capitalized costs be computed either on the basis of physical units of oil and gas (converted to a common unit of measure according to their relative energy content) or monetary units of net revenue. Several commentators recommended that only the use of physical units should be permitted; this would be consistent with the requirements for amortization of costs in cases of joint production of oil and gas under the Commission's successful efforts rules. Other commentators expressed agreement with the proposal to permit use of revenue units, since this computation utilizes the same basic information as amortization computations involving physical units, while automatically compensating for differences in the relative sales prices of the reserves. These commentators also pointed out that a method based on energy content ignores the fact that prices of oil and gas in today's regulated market environment do not necessarily correspond to their relative energy content.

However, the commentators favoring revenue units generally indicated that the computation should be based on gross revenues rather than net revenues. The use of net revenues, it was argued, requires estimates of future costs and introduces distortions when unusually high or low operating expenses are incurred in individual years. On the other hand, the relevant information for gross revenues is readily attainable, since current production is already recorded in dollars as

revenues, and reserve reports frequently indicate reserves in terms of dollars based on current prices.

The Commission believes that there should be consistency in the methods used by companies following the full cost method of accounting. Further, the Commission believes that the use of physical units in terms of energy content (BTU's) as the amortization basis has the greatest conceptual merit in a market environment in which the relative prices of oil and gas approximate their relative energy content. However, the fact that substantial production is currently subject to pricing regulations may result in significant differences in amortization under the BTU method as compared to amortization based on sales values. Accordingly, the final rules prescribe the use of the physical units method unless the use of such method, because of existing pricing regulations, would cause an amortization provision that would be inconsistent with the current prices being received. In those instances, the gross revenue method may be used as the basis for computing amortization rates.

##### LIMITATION ON CAPITALIZED COSTS

A majority of commentators expressed reservations concerning the proposal that the cost center ceiling be based on the present value of future net revenues from estimated production of proved oil and gas reserves. It was stated that future net revenues should not be discounted for purposes of the ceiling limitation, that other classifications of reserves in addition to proved reserves should be considered, or that anticipated price increases should be included. The primary concern expressed by these commentators was that the proposed ceiling computation, in certain cases, would result in write-offs that would reduce net capitalized costs below the actual realizable value of the properties.

The Commission continues to believe that the aggregate of (1) the present value of proved reserves and (2) the lower of cost or fair market value of unproved properties is an appropriate basis for determining the limitation on capitalized costs. However, the rules have been revised to specify that the costs of significant investments in unproved properties and development projects are to be considered separately for purposes of the ceiling computation.

If application of the rules, as a result of an unusual event or transaction such as a major purchase of proved properties, would require a writedown when the fair value of the properties in a cost center clearly exceeds the unamortized costs, the registrant may request an exemption from

the general rule. In such cases, the registrant should be prepared to demonstrate that the additional value clearly exists beyond reasonable doubt.

Finally, the rules specify that the cost center ceiling is to be computed giving consideration to income tax effects. Comments were received indicating that such income tax effects would be difficult to estimate and, in most cases, would not have a significant effect on the ceiling computation. However, the Commission believes that unusual tax relationships may exist in certain instances, as a result of the expiration of operating loss carryforwards, changes in tax rates, etc. In these circumstances, it will be necessary to consider tax effects in computing the ceiling limitation.

##### MINERAL PROPERTY CONVEYANCES

The rules dealing with mineral property conveyances specify that a sale of oil and gas reserves shall be accounted for as an adjustment of capitalized costs, unless the adjustment causes a significant alteration of the relationship between remaining capitalized costs and proved reserves attributable to the cost center. Guidance has been added that a significant alteration would not normally be expected to result from a sale involving less than 25 percent of the total reserve quantities of the cost center.

Paragraph (i)(6)(i) of the proposed rules would have required, in cases where the recognition of gain or loss on a sale of oil and gas properties is appropriate, that capitalized costs be allocated between reserves sold and reserves retained on the same basis used to compute amortization. Several commentators pointed out that the value of proved reserves sold and retained could differ significantly as the result of price regulations or quality differences. The sales price might also reflect values other than proved reserves, such as probable reserves or unproved leases, which should also be considered in the cost allocation. The rules as adopted provide that costs should be allocated between cost center assets sold and retained in the manner described in the proposed rules except where estimated relative fair values should be used in order to reflect other substantial economic differences between the properties sold and those retained.

The accompanying rules also clarify the Commission's intent that income from sales of unproved properties or from drilling arrangements should be recognized only in unusual situations where the cash consideration received exceeds the total cost of the properties plus any exploration and development costs to be subsequently incurred. Otherwise, income from sales of un-

proved properties or from drilling arrangements with respect to properties should be credited to the cost center, and any related costs should be capitalized as part of that cost center. In this way, drilling arrangement income is recognized as a reduction of overall costs of oil and gas reserves. The accounting for drilling arrangements should reflect the substance of the transactions, regardless of the form of the underlying agreements, including consideration of guarantees of performance or indebtedness.

##### DISCLOSURES

The Commission's proposed rules called for the disclosure by geographic area of (1) the approximate amount of capitalized costs that would have been charged to expense had the successful efforts method of accounting been followed, and (2) the approximate amount of costs incurred that would have been charged to expense under the successful efforts method. Many commentators objected to this proposed requirement as an unreasonable and unnecessary burden. It was also seen by these persons as inconsistent with the basic conclusions of ASR No. 253 with respect to the severe limitations of both historical-cost methods in permitting investors and government policy-makers to "gain an understanding of the operations of individual companies or to compare the operations of different companies." A small minority, however, expressed the view that the "as if" disclosures were essential for comparing the financial position and operating results of companies using alternative accounting methods during the period of implementation of reserve recognition accounting. Those in favor of the supplemental disclosures would, in addition, expand the requirement to include disclosure of pro forma net income.

The Commission has decided to defer temporarily any final action on this proposed disclosure requirement until it considers various questions that have been raised with respect to accounting changes and preferability of accounting methods in this industry. Therefore, the accompanying rules do not contain a requirement for supplemental disclosures based on successful efforts accounting, and this disclosure rule proposal remains outstanding.

##### CONSOLIDATED FINANCIAL STATEMENTS

Release No. 33-5968 stated that a company following the full cost method would be required to apply that method to all of its operations, including those of its subsidiaries and of investees accounted for by the equity method. Commentators pointed out that the requirement regarding



equity investees could present substantial difficulties. If an equity investee were following the successful efforts method, the information necessary to convert a company's investment would not be available on a timely basis in many situations. The Commission has reconsidered this proposal and has eliminated the requirement that the investor's accounting method be applied to its equity investees. However, the final rules specify that a registrant must apply its accounting method to the operations of its subsidiaries.

A number of commentators also requested clarification of other requirements as they apply to companies within a consolidated group. Paragraph (i)(3)(v) requires that amortization rates be determined on a consolidated basis even though this may result in a consolidated amortization provision that is not equal to the sum of the expenses for the individual members of the consolidated group. This same concept applies to the determination of the limitation on capitalized costs within cost centers.

#### RETROACTIVE RESTATEMENT

Several persons suggested that general guidance be provided for the retroactive application of the full cost rules, because of the number of estimates and judgments necessary in making such restatements. Accordingly, a discussion of the initial application of the rules is included in this release. Specifically, any provision of the rules that would not have a significant effect on prior years' financial statements need not be retroactively applied. Estimates of quantities of oil and gas reserves made in prior years for purposes of amortization computations shall not currently be revised in retrospect. Furthermore, if unamortized costs capitalized within a cost center do not exceed the ceiling limitation when the rules are initially applied, it is not necessary to determine whether there may have been an excess in prior years.

#### OTHER MATTERS

Several comment letters contained suggestions that cost centers of more than one country may be appropriate in certain cases (e.g., U.S. and Canada, or contiguous offshore areas such as the North Sea). However, oil and gas reserves in different countries are not always interchangeable, either in kind or in monetary value, because of varying energy and tax laws, market conditions, property rights, and national economic policies. Therefore, the requirement for establishing cost centers on a country-by-country basis (including related offshore areas) has been retained.

In order to conform to comparable rules for the successful efforts

method, paragraph (i)(3)(iv) has been added to acknowledge that, in some cases, depreciation of natural gas cycling and processing plants may appropriately be computed by a method other than unit-of-production.

Finally, a number of commentators expressed concern with the applicability of the proposed rules to properties regulated for rate-making purposes on an individual-company-cost-of-service basis. Among the technical amendments to its rules on financial accounting and reporting by oil and gas producers adopted by the Commission in Accounting Series Release No. 257 is a provision that appropriate recognition may be given to differences in capitalized costs and in the basis for amortization arising because of the effect of the rate-making process. This applies to both the successful efforts and the full cost rules. However, the Commission believes that the disclosure requirements of § 210.3-18(k) are relevant to rate-regulated companies, and therefore has not exempted them from these disclosure requirements.

#### EFFECTIVE DATE AND INITIAL APPLICATION

The provisions of § 210.3-18 are effective for fiscal years ending after December 25, 1978, that are contained in filings that include fiscal years ending after December 25, 1979, although earlier application is encouraged. Accounting changes adopted to conform to these rules are to be made retroactively by restating the financial statements of prior periods. Financial statements for the fiscal year in which these rules are first applied should disclose the nature of the accounting changes and their effect on income before extraordinary items, net income, and related per share amounts for each period restated.

Retroactive application of the provisions of these rules requires the use of estimates and approximations. A provision that would not have a significant effect on prior years' financial statements need not be retroactively applied. Further, retroactive application of some provisions of these rules may require the use of estimates of a type not previously made; information that may have become available some time after the year being restated may be taken into account in making those estimates, except that estimates of quantities of oil and gas reserves that had been made in prior years shall not currently be revised in retrospect.

For reporting entities following the full cost method of accounting, retroactive application of § 210.3-18(i)(4), "Limitations on capitalized costs," shall be applied as follows:

(a) If unamortized costs capitalized within a cost center do not exceed the cost center ceiling as of the beginning

of the fiscal period in which the rules are initially adopted, then no provisions shall be made for past periods when application of the rules based on information known during those periods might have resulted in unamortized capitalized costs being in excess of the cost center ceiling.

(b) If unamortized costs capitalized within a cost center exceed the cost center ceiling as of the beginning of the fiscal year in which the rules are initially adopted, then this excess shall be recognized retroactively through a charge to expense in the periods in which the excess initially arose.

#### COMMISSION ACTION

The Commission hereby amends 17 CFR Part 210 by the addition of new paragraph (i) to § 210.3-18, as set forth below:

§ 210.3-18 Financial accounting and reporting for oil and gas producing activities pursuant to the federal securities laws and the Energy Policy and Conservation Act of 1975.

(i) *Application of the full cost method of accounting.* A reporting entity that follows the full cost method shall apply that method to all of its operations and to the operations of its subsidiaries, as follows:

(1) *Determination of cost centers.* Cost centers shall be established on a country-by-country basis.

(2) *Costs to be capitalized.* All costs associated with property acquisition, exploration, and development activities (as defined in paragraph (a) of this section) shall be capitalized within the appropriate cost center. Any internal costs that are capitalized shall be limited to those costs that can be directly identified with acquisition, exploration, and development activities undertaken by the reporting entity for its own account, and shall not include any costs related to production, general corporate overhead, or similar activities.

(3) *Amortization of capitalized costs.* Capitalized costs within a cost center shall be amortized on the unit-of-production basis using proved oil and gas reserves, as follows:

(i) Costs to be amortized shall include (A) all capitalized costs, less accumulated amortization, other than the cost of properties described in paragraph (ii) below; (B) the estimated future expenditures (based on current costs) to be incurred in developing proved reserves; and (C) estimated dismantlement and abandonment costs, net of estimated salvage values.

(ii) The cost of unusually significant investments in unproved properties and major development projects may

be excluded from capitalized costs to be amortized, subject to the following:

(A) Costs of acquiring and evaluating unproved properties may be excluded only if the costs incurred are unusually significant in relation to the aggregate costs to be amortized (e.g., the costs of acquiring major offshore leases). All costs of acquiring such properties and related exploration costs shall be excluded from the amortization computation until it is determined whether or not proved reserves are attributable to the properties. Until such a determination is made, the properties shall be assessed individually to ascertain whether impairment has occurred (see paragraph (c) of this section). If the results of the assessment indicate impairment, the amount of the impairment shall be added to the costs to be amortized.

(B) Costs of major development projects may be excluded from amortization only if unusually significant development costs must be incurred prior to ascertaining the quantities of proved reserves attributable to the properties under development (e.g., the installation of an offshore drilling platform from which development wells are to be drilled, the installation of improved recovery programs, and similar major projects undertaken in the expectation of significant additions to proved reserves). In such cases, a portion of the development costs identified with such a project may be excluded from the costs to be amortized until the proved reserves added as a result of the project are ascertainable or until it is determined that impairment has occurred.

(iii) Amortization shall be computed on the basis of physical units, with oil and gas converted to a common unit of measure on the basis of their approximate relative energy content, unless economic circumstances (related to the effects of regulated prices) indicate that use of units of revenue is a more appropriate basis of computing amortization. In the latter case, amortization shall be computed on the basis of current gross revenues (excluding royalty payments and net profits disbursements) from production in relation to future gross revenues, based on current prices (including consideration of changes in existing prices provided only by contractual arrangements), from estimated production of proved oil and gas reserves. The effect of a significant price increase during the year on estimated future gross revenues shall be reflected in the amortization provision only for the period after the price increase occurs.

(iv) In some cases it may be more appropriate to depreciate natural gas cycling and processing plants by a method other than the unit-of-production method.

(v) Amortization computations shall be made on a consolidated basis, including investees accounted for on a proportionate consolidation basis. Investees accounted for on the equity method shall be treated separately.

(4) *Limitation on capitalized costs:* (i) For each cost center, capitalized costs, less accumulated amortization and related deferred income taxes, shall not exceed an amount (the cost center ceiling) equal to the sum of: (A) The present value of future net revenues from estimated production of proved oil and gas reserves as defined in paragraph (k)(6) of this section; plus (B) the cost of properties not being amortized pursuant to paragraph (i)(3)(ii) of this section; plus (C) the lower of cost or estimated fair value of unproved properties included in the costs being amortized; less (D) income tax effects related to differences between the book and tax basis of the properties involved.

(ii) If unamortized costs capitalized within a cost center, less related deferred income taxes, exceed the cost center ceiling, the excess shall be charged to expense and separately disclosed during the period in which the excess occurs. Amounts thus required to be written off shall not be reinstated for any subsequent increase in the cost center ceiling.

(5) *Production costs.* All costs relating to production activities, including workover costs incurred solely to maintain or increase levels of production from an existing completion interval, shall be charged to expense as incurred.

(6) *Mineral property conveyances and related transactions.* The provisions of paragraph (h) of this section, "Mineral property conveyances and related transactions if the successful efforts method of accounting is followed," shall apply also to those reporting entities following the full cost method except as follows:

(i) *Sales and abandonments of oil and gas properties.* Sales of oil and gas reserves in place and abandonments of properties shall be accounted for as adjustments of capitalized costs, with no gain or loss recognized, unless such adjustments would significantly alter the relationship between capitalized costs and proved reserves of oil and gas attributable to a cost center. A significant alteration would not ordinarily be expected to occur for sales involving less than 25 percent of the reserve quantities of a given cost center. If gain or loss is recognized for such a sale, total capitalized costs within the cost center shall be allocated between the reserves sold and reserves retained on the same basis used to compute amortization, unless there are substantial economic differences between the properties sold and those retained, in

which case capitalized costs shall be allocated on the basis of the relative fair values of the properties.

(ii) *Purchases of reserves.* Purchases of oil and gas reserves in place ordinarily shall be accounted for as additional capitalized costs within the applicable cost center; however, significant purchases of production payments or properties with lives substantially shorter than the composite productive life of the cost center shall be accounted for separately.

(iii) *Drilling arrangements.* Consistent with the provisions of paragraph (h) of this section, no income shall be recognized from sales of unproved properties or participation in various forms of drilling arrangements involving oil and gas producing activities (e.g., carried interest, turnkey wells, management fees, etc.) if the sales of unproved properties or drilling arrangements related thereto, in substance, will provide for the receipt or retention of an economic interest in any form in the properties. Circumstances in which income may be recognized are limited to situations where (A) the cash consideration received from the sale of unproved properties or drilling arrangements involving oil and gas producing activities exceeds the total cost of the properties plus any exploration and development costs to be subsequently incurred, or (B) the cash compensation represents reimbursement for amounts currently charged to expense. In the case of partnership or joint venture operations undertaken by the entity that involve more than one property, the determination of whether the cash compensation exceeds the cost of the properties shall be made based on the entity's participation in the total operations of the partnership or joint venture, rather than on a property-by-property basis. If the cash consideration received represents reimbursement for organization, offering, general and administrative expenses, etc., such compensation may be recognized as income only to the extent that costs have been currently incurred and charged to expense.

(7) *Disclosures.* Reporting entities that follow the full cost method of accounting shall disclose all of the information required by paragraph (k) of this section, with each cost center considered as a separate geographic area, except that reasonable groupings may be made of cost centers that are not significant in the aggregate. In addition:

(i) For each cost center for each year that an income statement is required, disclose the total amount of amortization expense (per equivalent physical unit of production if amortization is computed on the basis of physical units or per dollar of gross revenue



from production if amortization is computed on the basis of gross revenue).

(ii) State separately on the face of the balance sheet the aggregate of the capitalized costs of unproved properties and major development projects that are excluded, in accordance with paragraph (1)(3) of this section, from the capitalized costs being amortized. Provide a description in the notes to the financial statements of the current status of the significant properties or projects involved, including the anticipated timing of the inclusion of the costs in the amortization computation and, to the extent possible, the potential future impact on the amortization rate. In addition, indicate the nature of the costs by category and the approximate date on which costs were first incurred with respect to each such property or project.

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d), and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; section 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940; and section 503 (42 U.S.C. 6383) of the Energy Policy and Conservation Act of 1975.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact that these rules might have on competition and has concluded that to the extent the rules impose burdens on competition, such burdens are necessary and appropriate in furtherance of the purposes of the securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

DECEMBER 19, 1978.

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[8010-01-M]

[Release Nos. 33-6008; 34-15418; 35-20838;  
IC-10532]

## PART 229—STANDARD INSTRUCTIONS FOR FILING UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

### Disclosure of Oil and Gas Reserves and Operations; Amendments to Regulation S-K

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

**SUMMARY:** The Commission is amending certain disclosure forms and regulations to standardize and improve its disclosure requirements relating to oil and gas reserves and operations. The amendments incorporate into Regulation S-K requirements for disclosure of: (1) The present value of future net revenues from estimated production of proved oil and gas reserves; (2) any favorable or adverse event since the end of the most recent fiscal year which is believed to have caused a significant change in the proved reserves; (3) the average sales price and average production cost per unit of oil and gas produced; and (4) historical information concerning the number of productive and dry wells drilled. The amendments expand the disclosure of the net quantities of proved reserves from "as of a reasonably current date" to a period of five years and expand the types of companies which are required to disclose information concerning the estimated availability of oil and gas from principal sources. An exemption from these disclosure requirements has been provided for registrants whose oil and gas activities do not exceed specified criteria. The requirement in the temporary instruction to Item 2(b) of Regulation S-K (proposed as Note 2) that certain data be provided as non-financial statement information only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, also is being adopted.

**EFFECTIVE DATE:** Effective for fiscal years ending after December 25, 1978, for initial filings made on or after January 29, 1979. However, as provided in the text of this release under "Effective Date," certain filings need not comply with the temporary instruction until June 30, 1979.

### FOR FURTHER INFORMATION CONTACT:

Richard B. Smith, Office of Engineering (202/376-2391); J. Rowland Cook, Office of Disclosure Policy and Proceedings (202/755-1750); Joseph H. Schmitt, Division of Corporation Finance (202/376-2380); or James L. Russell, Office of the Chief Accountant (202/755-0222), Securities and Exchange Commission, 500

North Capitol Street, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** On August 31, 1978, the Commission published for comment proposed amendments to certain disclosure forms promulgated under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq., as amended by Pub. L. 94-29 (June 4, 1975)) and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)).<sup>1</sup> The proposals were published in conjunction with a separate release adopting rules relating to financial accounting for oil and gas producing activities<sup>2</sup> to achieve uniformity and integration with those accounting rules and to provide more meaningful disclosure regarding oil and gas reserves and operations.

This release summarizes the amendments proposed in Release No. 33-5967, the comments received on the proposed amendments<sup>3</sup> and the action taken with respect thereto.

### A. DISCUSSION OF COMMENTS AND THE FINAL RULES

#### REGULATION S-K, ITEM 2(a)—INSTRUCTION 3

This instruction as adopted requires that, in the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments, and the nature of the registrant's interest. If individual properties are of major significance to any industry segment, more detailed information concerning these matters should be furnished as well as maps which disclose location data of the significant properties. Under regulations existing prior to the adoption of these amendments, Instruction 3 of Item 2(a) of Regulation S-K required that the more detailed information should include, if appropriate, the results of development in the area and significant geological structures and formations.

The Commission believed that the phrase "significant geological struc-

<sup>1</sup>Securities Act Release No. 5967 (August 31, 1978), (43 FR 40720), ("Release No. 33-5967").

<sup>2</sup>Securities Act Release No. 5966 (August 31, 1978), (43 FR 40688) ("Release No. 33-5966"). Those rules also apply in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States for purposes of filing with the Department of Energy ("DOE") reports of energy information that are subject to the requirements of the Energy Policy and Conservation Act of 1975, 89 Stat. 871.

<sup>3</sup>Comments were received from 53 commentators. The comments are available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549. Requests should refer to File No. 87-752.

tures and formations" was unduly restrictive and proposed in Release No. 33-5967 that more useful information could be obtained if the discussion included any "significant geological data." Several commentators believed that any disclosure of the results of development in the area and significant geological data (and apparently significant geological structures and formations as the rule previously required) would cause premature public disclosure of valuable competitive information, as in the case of a very large discovery with unleased offset acreage which will subsequently be included in a competitive lease sale. In addition, it was asserted that disclosure in such situations would make valuable information available to prospective competitors (particularly foreign companies who might not have to reciprocate) without compensation to those who have expended large sums of money for its development.

It was not the Commission's intention that registrants be required to disclose proprietary information to their competitors. Accordingly, the Commission has deleted the proposed requirement that the results of development in the area and significant geological data be disclosed. However, the Commission still believes that when individual properties are of major significance to an industry segment more detailed information concerning production, reserves, locations, developments and the nature of the registrant's interest should be disclosed.

#### REGULATION S-K, ITEM 2(a)—INSTRUCTION 4

The first sentence of the proposed amendment to Instruction 4 has been revised to indicate more clearly when the staff of the Office of Engineering, Division of Corporation Finance, should be consulted about submissions of supplemental information concerning estimates of reserves. This codifies existing practices of the Office of Engineering which may review the full report of the engineer or other expert who estimated the reserves whether or not that report is specifically referred to in the document. Some commentators indicated that they should not be required to supply the full report since it contains confidential information and it may be subject to the Freedom of Information Act.<sup>4</sup> However, the Office of Engineering has been requesting the full report as supplemental information for many years and the Commission codified this existing practice on May 12, 1976.<sup>5</sup> Normally,

<sup>4</sup>5 U.S.C. 552.

<sup>5</sup>See, Securities Act Release No. 5706 (May 12, 1976) (41 FR 21764) ("Release No. 33-5706") announcing the adoption of amendments to Forms S-1 and S-7 and pub-

the registrant and its engineers or other experts will discuss the full report at a meeting with the staff of the Office of Engineering. At the conclusion of the meeting, the registrant usually retains possession of the report. If the registrant submits the full report by mail, the staff of the Office of Engineering will generally return it to the registrant at the completion of their review. Therefore, these full reports will usually not be kept in the possession of the Commission for any extended period. In this regard, the instruction has been modified to clearly indicate that the registrant may request the return of the full report. However, the registrant should realize that, absent an exemption,<sup>6</sup> the full report may be subject to a request under the Freedom of Information Act while that report is in the possession of the staff.

Nonetheless, the Commission believes that it is necessary for its staff to have the option to review this report in order to make sure that the appropriate procedures were used in determining the estimates of proved reserves and that such estimates are reasonable. The registrant is urged to consult with the staff of the Office of Engineering prior to filing in order to determine if any supplemental information will have to be furnished to the staff and, if so, what type of information is to be furnished. This procedure should help expedite review of the registrant's document.

Instruction 4 also requires that if the estimates of proved reserves of oil and gas are represented as being based on estimates prepared or reviewed by independent consultants, those independent consultants should be named in the document.<sup>7</sup> The Commission believes that identification of the independent consultant(s) is important to

liciation of an amendment to Guide 28 of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933, and the adoption of amendments to Forms 10 and 10-K and publication of amendments to Guide 2 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934 relating to the disclosure of estimates of oil and gas reserves. See also, Securities Act Release No. 5893 (December 23, 1977) (42 FR 65554) incorporating the disclosure required by Release No. 33-5706 with Regulation S-K.

<sup>6</sup>For example, see 17 CFR 200.80(b)(9) which considers geological and geophysical information and data, including maps, concerning wells to be nonpublic matters.

<sup>7</sup>Section 7 of the Securities Act presently requires that the expert be named, but the Exchange Act has no comparable provision. The Commission under the general rule-making authority granted by section 23(a) of the Exchange Act has amended Regulation S-K to require that such an expert be named in documents filed under the Exchange Act.

an evaluation by investors of the reserve information. This instruction applies to all extractive enterprises whose reserves are represented as being based on estimates prepared or reviewed by independent consultants. Although Release No. 33-5967 proposed that this instruction apply only to estimates of proved reserves of oil and gas, the Commission believes that it would not cause an undue burden and that it would conform to present administrative practice to extend this instruction to extractive enterprises other than oil and gas enterprises.

Release No. 33-5967 proposed that a summary letter from any independent consultant who prepared or reviewed estimates of proved oil and gas reserves be included in the document. Several commentators indicated that the summary letter required disclosure of items which were meaningless and were not disclosed elsewhere in the document, i.e., proved developed producing and proved developed non-producing reserves and the estimated productive life of the reserves. In addition, other commentators questioned whether the Commission was proposing that the present value of future net revenues be determined by an independent consultant if that consultant estimated the reserves.

The Commission did not propose and is not requiring that independent consultants prepare or review estimates of proved reserves of oil and gas. Nor is the Commission requiring that independent consultants determine the present value of future net reserves if those independent consultants prepare or review the estimates of proved reserves. The Commission believes that the comments about the usefulness of the letter have some merit, especially since independent accountants will be expressing an opinion on financial information which includes estimates of proved reserves of oil and gas beginning with fiscal years ending after December 25, 1979. Therefore, the proposed requirement for such a letter has been deleted from the adopted Instruction 4.

#### REGULATION S-K, ITEM 2(b)—INSTRUCTION 1

Instruction 1 of Item 2(b) provides that limited partnerships or joint ventures under certain conditions are not required to include the information specified by Item 2(b). This exemption is the same as adopted in Release No. 33-5706.

#### REGULATION S-K, ITEM 2(b)—INSTRUCTION 2

Instruction 2 of Item 2(b), through a cross-reference to Regulation S-K, 17 CFR 210.3-18(k), provides an exemption from the disclosure requirements of Item 2(b) for registrants whose rev-



enue, income, and assets relating to oil and gas producing activities are less than ten percent of the corresponding consolidated amounts. For purposes of the asset criterion, proved oil and gas properties are to be measured on the basis of "the present value of estimated future net revenues" rather than historical cost. Several commentators requested that such guidelines be established for determining when oil and gas operations are material. The Commission agrees that guidance would be beneficial to registrants in order to determine when the disclosure of oil and gas operations is appropriate.

**REGULATION S-K, ITEM 2(b)—  
INSTRUCTION 3**

Instruction 3 of Item 2(b) states that the definitions in Regulation S-X, § 210.318(a) shall apply to Item 2(a) with respect to oil and gas operations and to Item 2(b). This more clearly indicates the intent of the Commission. The cross-reference in the proposed rules (included as part of paragraph (b)(1)) appeared to limit the definitions of terms, such as proved reserves, to paragraph (b)(1). This was not the intent of the Commission and the cross-reference in this instruction as adopted clarifies this.

**REGULATION S-K, ITEM 2(b)—  
INSTRUCTION 4**

Instruction 4 of Item 2(b) states that disclosure of estimates of probable or possible reserves and any estimated value thereof shall not be disclosed in any document publicly filed with the Commission. Prior to the adoption of the amendment to Regulation S-K, Instruction 2 to Item 2(b) stated "Estimates of future recoverable oil and gas shall be limited to proved developed and proved undeveloped future net recoverable reserves." Although this statement was not included in the proposed disclosure requirements of oil and gas reserves and operations in Release No. 33-5967, the Commission intended no substantive change in the disclosure practices concerning such reserves. However, since in the past an occasional document has contained information concerning probable or possible reserves when originally filed, the Commission believes that an affirmative statement reflecting the present practice is appropriate. The reason the Commission does not permit disclosure of these reserves is that estimates of probable or possible reserves and any value thereof are not sufficiently reliable to be included in any publicly filed document and disclosure of this information may be misleading to investors.\*

\*See *Sunray DX Oil Co. v. Helmerich & Payne, Inc.*, 398 F.2d 447, 451 (1968) which stated the following in arriving at its opin-

**REGULATION S-K, ITEM 2(b)—TEMPORARY  
INSTRUCTION**

The disclosure requirements of the temporary instruction apply only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, thereafter the information required to be filed by this instruction will be disclosed as part of the financial statements pursuant to Regulation S-X, § 210.3-18(k). The temporary instruction requires disclosure of the following: (1) Capitalized costs as of the end of such fiscal year (paragraph i); (2) costs incurred in oil and gas producing activities for such fiscal year (paragraph ii); (3) revenues from producing oil and gas for such fiscal year (paragraph iii); (4) estimated quantities of proved reserves (and changes therein), of proved developed reserves, of quantities applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, and the registrant's share of proved reserves of its investees accounted for by the equity method for such fiscal year (paragraph iv); and (5) information on future net revenue from estimated production of proved oil and gas reserves including information concerning the present value of the estimated future net revenues as of the end of such fiscal year or for such fiscal year, as applicable (paragraph v).

Paragraphs (i), (ii), (iii) are adopted as proposed in Release No. 33-5967. However, paragraph (iv) has been modified to indicate more clearly that the period of time for which data specified by Regulation S-X, § 210.3-18(k)(5) is to be disclosed is just the 1978 fiscal year. This modification is not intended as a substantive change from paragraph (iv) as proposed in Release No. 33-5967.

Paragraph (v) to the temporary instruction contains, among other things, instructions for disclosure of reserves when there has been a recent takeover or nationalization by a foreign government or when a foreign government restricts the disclosure of estimated reserves under its governmental authority. These instructions applied to the disclosure of estimates of proved reserves under regulations existing prior to the adoption of these amendments and will apply to the disclosure of these estimates when the most recent annual financial statements included in the documents are

ion, that failure to disclose information concerning probable oil reserves of off-shore tracts in a proxy statement did not constitute a violation of Section 14(a) of the Exchange Act. Any statement concerning "oil reserves" other than in the category of the "proved" could certainly be misleading to any investor other than one who is an expert in the industry.

for fiscal years ending after December 25, 1979. As proposed in Release No. 33-5967, the instructions would not have applied to the fiscal year ending after December 25, 1978, and on or before December 25, 1979. The Commission believes that there is no reason for not applying these instructions to this interim period and has, therefore, adopted them. The instruction with regard to updating reserve information has also been included for this interim period since any event which is believed to have caused a significant change in proved reserves should be brought to the attention of investors.

Several commentators suggested that the safe harbor provision of Regulation S-X, § 210.3-18(k)(6) apply to the disclosure of future net revenues from estimated production of proved oil and gas reserves for the period ending after December 25, 1978, and on or before December 25, 1979. The Commission agrees that the safe harbor concept embodied in Regulation S-X, § 210.3-18(k)(6) should be applied to the information disclosed under the temporary instruction and, therefore, has incorporated the safe harbor provision as part of paragraph (v) of the temporary instruction.

A number of commentators expressed concern with the Commission's proposal to require disclosure of the present value of estimated future net revenues from production of proved reserves. They stressed the uncertainties inherent in estimating quantities of proved reserves and the need for judgment in projecting rates of production and the timing of development expenditures. Some also indicated that the valuation methodology based on current prices and costs and a ten percent discount rate would not necessarily provide a meaningful indication of the current value of proved reserves. Similar arguments were made previously in response to the Commission's original proposals for such disclosures and were discussed in detail in Release No. 33-5966. In that release, the Commission expressed its conclusion that the usefulness of this supplemental information outweighs the limitations associated with the subjective nature of the data and the necessary use of a uniform valuation methodology. The Commission continues to believe that development of this information is essential if significant improvement in financial reporting for the oil and gas producing industry is to be achieved.

Most of the commentators, however, focused their attention on the specific proposal to require the disclosure of estimated quantities and present values of oil and gas in the "Description of Property" section of filings covering the fiscal year ending after

December 25, 1978, and on or before December 25, 1979. They believed the relatively late imposition of such a requirement for calendar year 1978 filings would place an unreasonable burden on registrants. There would not be ample time, it was argued, for the proper development of methods and procedures on an objective and cost effective basis. It was pointed out that the preparation of estimates of reserves valuations will require experimentation and testing to establish the validity of the techniques being used, as well as the development of new computer programming. This substantial time commitment would be in addition to the burden of modifying accounting systems and records for changes required by the retroactive adoption of the specified form of successful efforts or full cost accounting. It was also pointed out that companies must devote a significant effort to complying with the requirements of the Natural Gas Policy Act of 1978 and with the Department of Energy's Financial Reporting System for which 1977 reports are due on February 1, 1979.

In addition to the time burdens, a number of commentators expressed the belief that disclosure of reserve information and operating data would be inappropriate at this time. Although the information called for in the proposed rules would not be required to be examined by independent accountants, it would be subject to audit for purposes of 1979 financial statements. It was argued that this could result in subsequent revisions to the initial disclosures. Also, the disclosure of 1978 data on capitalized costs, costs incurred, revenues, etc., might have to be restated in the following year for the effects of the retroactive adoption of the required accounting changes.

For these reasons, many commentators urged that the disclosures of reserve quantities and values and of operating data be postponed for one year. Alternatively, they recommended only partial application of the requirements, e.g., that only reserve quantities be disclosed, that the requirements apply only to domestic operations, or that smaller companies be exempted. Others requested that the disclosures be treated on an "experimental" basis, submitted directly to the Commission and not as part of the 10-K filing.

The Commission has given careful consideration to these comments and is fully aware that a significant commitment of resources will be required in order to develop the information specified by the new rule. However, the Commission considers this reserve information to be of such significance to a complete presentation of the fi-

nancial position of oil and gas producers that every effort should be made to make it available to investors as soon as practicable. Furthermore, experience in the preparation and reporting of reserve information is critical to the timely consideration of reserve recognition accounting. Limitations to the applicability of the reporting requirements would reduce the quantity and comprehensiveness of the data, thereby limiting the experience upon which to assess the methodology that has been prescribed and to ascertain the most meaningful form of presentation.

The Commission realizes, however, that for some registrants it might be an undue burden to compile the information required by the temporary instruction to Item 2(b) during the first quarter of 1979. As to documents under the Securities Exchange Act of 1934 required to be filed prior to June 30, 1979, and as to registration statements under the Securities Act of 1933 which become effective before such date, registrants may either comply with the disclosure requirements of the temporary instruction, or with those disclosure requirements relating to estimates of proved reserves existing prior to these amendments. However, any registrant who elects to delay in filing the information required by the temporary instruction in a document filed under the Exchange Act must file such information by amendment no later than June 30, 1979.<sup>9</sup> The Commission encourages each registrant to make every attempt to include the information required by the temporary instruction at the time the document is required to be filed.

**REGULATION S-K, ITEM 2(b)(1)**

This paragraph, which does not take effect until the fiscal year ending after December 25, 1979, expands the present disclosure requirements of Item 2(b)(1) to reflect certain estimates of proved reserves on a five year basis rather than "as of a reasonably current date." The information disclosed serves as a summary of the estimates of proved reserves presented in the financial statements pursuant to Regulation S-X, § 210.3-18(k)(5) and as a comparison with the presentation under Item 2(b)(3) of oil and gas produced. Paragraph (b)(1) also requires disclosure of the present value of estimated future net revenues for each of the net quantities of reserves presented. These provisions are adopted as proposed in Release No. 33-5967.

<sup>9</sup>However, the April 30, 1979, deadline for written comments on Securities Act Release No. 5969 (43 FR 40726), the "Proposed Supplemental Earnings Summary," is not being extended. The Commission stresses the need for timely comments on this supplemental disclosure in order that final rules can be developed in time for 1979 financial statements.

Instruction (a) to this item indicates the geographic areas for which net quantities of reserves of oil and gas and the present value of estimated future net reserves are to be disclosed. It is also adopted as proposed in Release No. 33-5967.

Instruction (b) to this item has been clarified to indicate that disclosure should be given of the effect on ownership of reserves of any takeover or nationalization by foreign governments of properties owned by the registrant which has occurred "within the last fiscal year." Although the basic provision was adopted in the amendments announced in Release No. 33-5706, some commentators were unclear as to whether the discussion was based on historical information or was a prediction of a future event. The instruction as adopted clearly indicates that the discussion should be based on historical information. However, it should be noted that, if there exists a reasonable possibility of a risk of takeover or nationalization of properties owned by the registrant in that foreign country, appropriate disclosure of that risk should be made in the document.

Instruction (c) to this item has been modified to include those situations when any foreign government requires the disclosure of reserves other than proved. This codifies existing practices of the Office of Engineering, Division of Corporation Finance, which requires the document to identify the country, cite the law or regulation which requires such disclosure, and indicate that the reserve estimates for that geographic area include reserves other than proved.

Instruction (d) to this item has been modified to indicate that the statement as to whether any event has caused a significant change in the estimated proved reserves may be based on the belief of the registrant.

**REGULATION S-K, ITEM 2(b)(2)**

This paragraph requires disclosure of any other federal authority or agency with whom estimates of proved oil and gas reserves have been filed and an explanation for differences between such estimates and the estimates included in the document. This information need not be disclosed if the difference between the total reserve estimate included in the Commission filing and the total reserve estimate filed with the authority or agency does not exceed five percent. The Commission has deleted the requirement for disclosure of reserve estimates filed with foreign governmental authorities since it believes such information usually is not material to an investment decision.



## REGULATION S-K, ITEM 2(b)(3)

This paragraph requires disclosure for each of the last five years of (1) oil and gas produced; and (2) oil and gas received under long-term or similar agreements with foreign governments or authorities in which the registrant acts as producer. This provision is adopted as proposed in Release No. 33-5967.

The average sales price per unit of oil produced and of gas produced and the average production cost per unit of production are required to be disclosed for the last five fiscal years. Several commentators indicated that it would be an undue burden to obtain this information for years ending prior to December 25, 1978. The Commission believes that this comment has some merit and, therefore, will not require registrants to disclose the information for fiscal years ending prior to December 25, 1978. However, the Commission encourages registrants to disclose this information for periods ending prior to December 25, 1978, if obtaining such information would not be an undue burden on them.

Instructions (a), (b), and (d) to this item are adopted as proposed in Release No. 33-5967. The discussion of "production of natural gas" in Instruction (c) has been modified to indicate that recovered gas-lift gas and reproduced gas should not be included in production until sold.

Instruction (e) to Item 2(b)(3) indicates that units of production shall be expressed in common units of production with oil or gas converted to a common unit of measure on the basis of its approximate relative energy content or by the gross revenue method, depending on the method of accounting used.

## REGULATION S-K, ITEM 2(b)(4)

This paragraph requires disclosure of productive wells and developed acres. Some of the commentators expressed confusion as to what type of acreage was to be disclosed under this paragraph and under Item 2(b)(5). The Commission adopted the terminology "developed acres" in order to be consistent with disclosure required by DOE in Form EIA-28.<sup>10</sup>

Instructions (a) and (d) to this item are adopted as proposed in Release No. 33-5967. The Commission has clarified in Instructions (b) and (c) to paragraph (b)(4) that the only type of interest which is to be used in determining gross and net wells and acres is a "working interest." Instruction (e) has been added to this item to clarify the meaning of "productive wells" as that term is used to define "developed acres."

<sup>10</sup> 43 FR 27056.

## REGULATION S-K, ITEM 2(b)(5)

This paragraph requires disclosure of undeveloped acreage and, as indicated above, is consistent with disclosure required by EIA-28. Since some commentators were confused by the definitions for "undeveloped acreage" which were proposed in Release No. 33-5967, the Commission has adopted definitions which it believes to be consistent with Form EIA-28 and industry practice.

## REGULATION S-K, ITEM 2(b)(6)

This paragraph requires disclosure of productive and dry exploratory and development wells drilled during the last five fiscal years. As with Item 2(b)(3)(ii), several commentators indicated that it would be an undue burden to obtain this information for periods ending prior to December 25, 1978. Therefore, the Commission will not require that this historical information be disclosed for fiscal years ending prior to December 25, 1978.

Many commentators objected to the proposal in Release No. 33-5967 of disclosure of net drilling footage of exploratory and development wells. They believed that the disclosure of such information did not justify the burden of compliance. After reconsideration of the benefits to be derived from this disclosure, the Commission has decided to delete the proposal.

## REGULATION S-K, ITEM 2(b)(7)

This paragraph requires disclosure of the present activities of the registrant. Several commentators questioned whether "wells temporarily suspended" should be disclosed here or under Item 2(b)(6) as part of wells drilled. The Commission believes that wells temporarily suspended should be included under Item 2(b)(7) as part of wells in process of drilling. These wells would not be included under Item 2(b)(6) since that information is limited to wells "completed" as that term is defined in Instruction (d) to Item 2(b)(6). In order to eliminate any confusion, however, the Commission has indicated in Item 2(b)(7) that wells in process of drilling include "wells temporarily suspended."

## REGULATION S-K, ITEM 2(b)(8)

This paragraph requires that registrants who are obligated to supply fixed and determinable quantities of oil and gas in the future under existing contracts or agreements provide: (1) Certain information concerning the availability of oil and gas to the registrant; (2) the registrant's delivery commitments of oil and gas; and (3) the steps taken by the registrant to insure available reserves and supplies are sufficient to meet such commitments.

Several commentators recommended that the proposed disclosure requirements in Release No. 33-5967 be limited to obligations arising under warranty contracts (i.e., the producer is obligated to make good on a particular commitment) and not include obligations under deliverability contracts (i.e., producers are obligated to deliver oil and gas only if production is operationally feasible).

The Commission is of the view that this paragraph should not be limited to warranty contracts since there are other types of contracts or agreements which obligate the registrant to provide fixed and determinable quantities of oil or gas in the future. However, the Commission believes that this paragraph should not apply to those contracts or agreements which specify that indefinite quantities of oil or gas are to be provided by the registrant. Therefore, this paragraph as adopted has been revised to indicate that the registrant need only disclose the required information if the registrant is obligated to provide fixed and determinable quantities of oil or gas in the future. Such required information includes the total quantities of oil and gas which are subject to delivery commitments. With respect to this disclosure, the term "customers' requirements" which appeared in conjunction with the term "commitment" in Release No. 33-5967 and which was originally adopted in Release No. 33-5708 has been deleted since the term "commitment" is consistent with industry practice and adequately indicates what information is to be disclosed, i.e., fixed and determinable quantities of reserves and supplies committed to a customer under terms of a purchase contract.

A few commentators indicated that compliance with a literal reading of the proposed paragraph would result in disclosure of every sales and purchase contract, regardless of the contract's significance. It was not the intention of the Commission to require disclosure of insignificant contracts and, therefore, the proposed paragraph has been modified, where appropriate, to indicate that only significant contracts are to be disclosed and that only total amounts need be given.

Proposed Item 2(b)(8)(iii)(B) has been revised to include those reserves or supplies subject to curtailments. This modification clarifies the intent of the Commission and codifies existing practices.

## B. CERTAIN FINDINGS

As required by Section 239(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they impose no sig-

nificant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors and registrants.

## C. EFFECTIVE DATE

These amendments are effective for documents filed with the Commission when the most recent annual financial statements included in the documents are for fiscal years ending after December 25, 1978 and if the filing is initially made on or after January 29, 1979.

Notwithstanding the effective date of these amendments, registrants who are required to file documents under the Exchange Act prior to June 30, 1979, are not required to disclose information required by the temporary instruction to Item 2(b) at the time the document is required to be filed. However, such information must be filed by amendment to the document no later than June 30, 1979. Registrants who file documents under the Securities Act which become effective prior to June 30, 1979, are not required to disclose this information. Any document which does not contain this information at the time the document is required to be filed under the Exchange Act or at the time the document becomes effective under the Securities Act should contain estimates of reserves as explained under the temporary instruction. In addition, the text of the Regulation in Items 2(b)(1), 2(b)(3)(ii) and 2(b)(6) provides that historical information need not be provided for fiscal years ending prior to December 25, 1978. Notwithstanding the effective date of these mandatory requirements, registrants are urged to comply with these new provisions as soon as possible.

## D. TEXT OF AMENDMENTS

The Commission hereby amends Item 2 of Regulation S-K, Part 229 of Title 17, by revising Instruction 3 and adding Instruction 4 to paragraph (a) and by revising paragraph (b) as set forth below:

## § 229.20 Information required in document.

## ITEM 2. DESCRIPTION OF PROPERTY

- (a) (No change). Instructions to Item 2(a). 1. (No change).
- 2. (No change).
- 3. In the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments, and the nature of the registrant's interest. If individual properties are of major significance to an industry segment: (i) More detailed information concerning these

matters should be furnished; and (ii) appropriate maps should be used to disclose location data of significant properties except in cases for which numerous maps would be required.

4. (i) If reserve estimates are referred to in the document, the staff of the Office of Engineering, Division of Corporation Finance, of the Commission should be consulted. That office may request that a copy of the full report of the engineer or other expert who estimated the reserves be furnished as supplemental information and not as part of the filing. Upon request and where consistent with the protection of investors and with the Freedom of Information Act, 5 U.S.C. 552, the supplemental information will be returned to the registrant.

(ii) If the estimates of reserves, or any estimated valuation thereof, are represented as being based on estimates prepared or reviewed by independent consultants, those independent consultants should be named in the document.

[end of instructions to Item 2(a)]

(b) If oil and gas operations are material to the registrant's and its subsidiaries' business operations or financial position, disclose the following under appropriate captions (in tabular form if practicable, and with cross references, where applicable, to related information disclosed in financial statements):

## GENERAL INSTRUCTIONS

Instruction 1: Limited partnerships or joint ventures that conduct, operate, manage, or report upon oil and gas drilling or income programs which acquire properties either for drilling and production, or for production of oil, gas or geothermal steam or water are not required to include the information specified by this Item 2(b).

Instruction 2: No information need be given in answer to this Item 2(b) if the registrant qualifies for the exemption provided in Regulation S-X, § 210.3-18(k), except that for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, the availability of the exemption need be based only on the most recent fiscal year.

Instruction 3: The definitions in Regulation S-X, § 210.3-18(a) shall apply to Item 2(a) with respect to oil and gas operations, and to this Item 2(b).

Instruction 4: Estimates of probable or possible reserves and any estimated value thereof shall not be disclosed in any document publicly filed with the Commission.

[end of general instructions to Item 2(b)]  
Temporary Instruction to Item 2(b): This temporary instruction shall apply only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979. For such fiscal year, registrants shall disclose (in lieu of the information required by Item 2(b)(1) below) the following:

- (i) The capitalized costs specified by Regulation S-X, § 210.3-18(k)(2), as of the end of such fiscal year.
- (ii) The costs incurred in oil and gas producing activities specified by Regulation S-X, § 210.3-18(k)(3) for such fiscal year.
- (iii) The revenues from producing oil and gas specified by Regulation S-X, § 210.3-18(k)(4) for such fiscal year.
- (iv) The data specified by Regulation S-X, § 210.3-18(k)(5) ("Disclosure of estimated quantities of proved oil and gas reserves") for such fiscal year. The instructions to Item 2(b)(1) shall apply to this paragraph (iv).

(v) The information on future net revenue from estimated production of proved oil and gas reserves specified by Regulation S-X, § 210.3-18(k)(6) as of the end of such fiscal year or for such fiscal year, as applicable. This information shall be subject to the "safe harbor" provision of Regulation S-X, § 210.3-18(k)(6).

For purposes of paragraphs (i), (ii), and (iii) of this temporary instruction, the accounting measurements standards reflected in the registrant's financial statements for such fiscal year shall apply.

Registrants who are required to file documents under the Securities Exchange Act of 1934 prior to June 30, 1979, are not required to disclose the information required by this temporary instruction at the time the document is required to be filed. However, such information must be filed by amendment to the document no later than June 30, 1979. Registrants who file documents under the Securities Act of 1933 which become effective prior to June 30, 1979, are not required to disclose this information in such documents. Any document which does not contain the information at the time the document is required to be filed under the Securities Exchange Act of 1934 or at the time the document becomes effective under the Securities Act of 1933 should contain as of a reasonably current date estimates of the following: (1) Proved oil and gas reserves; (2) proved developed oil and gas reserves; and (3) oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer. The instructions to Item 2(b)(1) shall apply to the disclosure of these reserve estimates.

This temporary instruction shall be deleted from this Item 2(b) when the rules in Regulation S-X, § 210.3-18 become effective for financial statements.

[end of temporary instruction to Item 2(b)]

2(b)(1)(i) As of the end of each of the last five fiscal years, (but not for fiscal years ending prior to December 25, 1978), estimated net quantities of: (A) Proved oil and gas reserves; (B) proved developed oil and gas reserves; (C) oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer; and (D) the registrant's share of reserves of investees accounted for by the equity method.

(ii) For each of the net quantities reported, the present value of estimated future net revenues, computed in accordance with Regulation S-X, § 210.3-18(k)(6).

The following instructions apply to this Item 2(b)(1).

(a) If these reserves are located entirely within the registrant's home country, that fact shall be disclosed. If some or all of the reserves are located in foreign countries, the disclosure of net quantities of reserves of oil and gas and present value of estimated future net revenues (as required above) shall be separately reported for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant reserves are located. Foreign geographic areas are individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

(b) Disclosure shall be given of the effect on ownership of reserves of any takeover or nationalization within the most recent fiscal year by foreign governments of properties



owned by the registrant, including any change of a property interest into a long-term supply, purchase, or similar agreement.

(c) If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proved, the registrant should notify the Office of Engineering, Division of Corporation Finance, of the Commission. If the required information is not disclosed or if categories of reserves other than proved are disclosed for these reasons, the document should identify the country, cite the law or regulation which restricts or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that the reserve estimates include reserves other than proved.

(d) If no major discovery or other favorable or adverse event that is believed to have caused a significant change in the estimated proved reserves has occurred since the end of the most recent fiscal year, a statement to that effect shall be made; otherwise, an explanation of any such discovery or event should be provided, including, to the extent reasonable, an estimate of the proved oil and gas reserves associated with such discovery or event.

[end of instructions to Item 2(b)(1)]

2(b)(2) Any estimates of total, proved net oil or gas reserves filed with or included in reports to any other federal authority or agency since the beginning of the last fiscal year (or a statement that there were none), together with the name of the authority or agency and an explanation of the reasons for differences, if any, between such estimates and the estimates included in the document. This requirement shall not apply if the difference between the total reserve estimate included in the Commission filing and the total reserve estimate filed with the federal authority or agency does not exceed five percent. However, a statement that the difference does not exceed five percent shall also be included.

[end of Item 2(b)(2)]

2(b)(3)(i) Net quantities of oil (including condensate and natural gas liquids) and of gas produced for each of the last five fiscal years and the net quantities of each received during each of these years applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, by areas no larger than the geographic areas used for estimated reserves in Item 2(b)(1) above.

(ii) For each of the last five fiscal years (but not for fiscal years ending prior to December 25, 1978), by the same geographic areas for which production data are required: (A) The average sales price (including transfers) per unit of oil produced and of gas produced; and (B) the average production cost (lifting cost) per unit of production.

The following instructions apply to this Item 2(b)(3):

(a) Generally, net production should include only production that is owned by the registrant and produced to its interest, less royalties and production due others. However, in special situations (e.g., foreign production) net production before royalties may be provided if more appropriate. If "net before

royalty" production figures are furnished, the change from the common usage of "net production" should be noted.

(b) Any part of natural gas liquids production obtained through or from processing plant ownership rather than through leasehold ownership should be reported separately, if material.

(c) Production of natural gas should include only marketable production of gas on an "as sold" basis. Production will include dry, residue, and wet gas, depending on whether liquids have been extracted before the registrant passed title. Flared gas, injected gas, and gas consumed in operations should be omitted. Recovered gas-lift gas and reproduced gas should not be included until sold.

(d) The transfer price of oil and gas produced shall be determined in accordance with Regulation S-X, § 210.3-18(k)(4).

(e) The average production cost per unit of production shall be computed using production costs disclosed pursuant to Regulation S-X, § 210.3-18(k)(3). Units of production shall be expressed in common units of production with oil or gas converted to a common unit of measure on the basis used in computing amortization (relative energy content or gross revenue method). See Regulation S-X, § 210.3-18 (e)(3) or (i)(3)(iii), whichever is appropriate.

[end of instructions of Item 2(b)(3)]

2(b)(4) As of a reasonably current date or as of the end of the most recent fiscal year, the total gross and net productive wells, expressed separately for oil and gas, and the total gross and net developed acres (i.e., acres spaced or assignable to productive wells) by the geographic areas for which production data are required pursuant to Item 2(b)(3) above.

The following instructions apply to this Item 2(b)(4):

(a) For purposes of this paragraph, one or more completions in the same bore hole shall be counted as one well. A footnote shall disclose the number of wells with multiple completions. If one of the multiple completions in a given well is an oil completion, the well shall be classified as an oil well.

(b) A gross well or acre is a well or acre in which a working interest is owned. The number of gross wells is the total number of wells in which a working interest is owned.

(c) A net well or acre is deemed to exist when the sum of fractional ownership working interests in gross wells or acres equals one. The number of net wells or acres is the sum of the fractional working interests owned in gross wells or acres expressed as whole numbers and fractions thereof.

(d) For those unusual situations in which gross and net data cannot be supplied, alternative disclosure should be furnished that adequately describes the registrant's productive wells and developed acreage.

(e) Productive wells are producing wells and wells capable of production.

[end of instructions to Item 2(b)(4)]

2(b)(5) As of a reasonably current date or as of the end of the most recent fiscal year, the amounts of undeveloped acreage, both leases and concessions, if any, expressed in both gross and net acres by appropriate geographic area, together with an indication of acreage concentrations, and, if material, the minimum remaining terms of leases and concessions. Undeveloped acreage is considered to be those lease acres on which wells have not been drilled or completed to a

point that would permit the production of commercial quantities of oil and gas regardless of whether or not such acreage contains proved reserves. Undeveloped acreage should not be confused with undrilled acreage Held By Production under the terms of a lease.

[end of Item 2(b)(5)]

2(b)(6) For each of the last five fiscal years (but not for fiscal years ending prior to December 25, 1978), by appropriate geographic areas: (a) The number of net productive and dry exploratory wells drilled; and (b) the number of net productive and dry development wells drilled.

The following instructions apply to this Item 2(b)(6):

(a) A dry well (hole) is an exploratory or a development well found to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

(b) A productive well is an exploratory or a development well that is not a dry well.

(c) The number of wells drilled refers to the number of wells (holes) completed at any time during the fiscal year, regardless of when drilling was initiated.

(d) The term "completion" refers to the installation of permanent equipment for the production of oil or gas, or, in the case of a dry hole, to the reporting of abandonment to the appropriate agency.

[end of instructions to Item 2(b)(6)]

2(b)(7) Present activities, such as the number of wells in process of drilling (including wells temporarily suspended), waterfloods in process of installation, pressure maintenance operations, and any other related operations of material importance by appropriate geographic areas. This description of present activities should be provided for an "as of" date as close to the date of filing the document as reasonably possible or as of the end of the most recent fiscal year. The disclosure of wells in the process of being drilled should include only those wells actually being drilled at the "as of" date and should be expressed in terms of both gross and net wells. The disclosure should not include wells planned but not commenced, unless there are factors which make such information material.

[end of Item 2(b)(7)]

2(b)(8) If the registrant is obligated to provide a fixed and determinable quantity of oil or gas in the future under existing contracts or agreements, material information concerning the estimated availability of oil and gas from any principal sources.

(i) Such information shall be furnished as to current and future reserves and supplies, and shall: (A) Identify the principal sources of oil and gas to be relied upon and the total available amounts expected to be received from each principal source and from all sources combined; (B) disclose the total quantities of oil and gas which are subject to delivery commitments; and (C) indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information shall be provided for an appropriate period of one to five years.

(ii) The term "availability" is used herein to mean an estimate of that quantity of oil and gas which can be produced from current proved developed reserves using presently installed equipment under existing economic and operating conditions and an estimate of amounts that can be delivered to the registrant under long-term contracts

or agreements on a per-day, per-month, or per-year basis. This term is not intended to have the same meaning as "deliverability" as used by the Federal Energy Regulatory Commission in FPC Form No. 15.

(iii) The registrant should develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure should be in a form understandable to investors and should include, but not be limited to description of the following factors: (A) Significant supplies dedicated or contracted to the registrant; (B) any significant amounts of reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptible contracts; (C) any priority allocations or price limitations imposed by federal or state regulatory agencies, as well as other factors beyond the control of the registrant which may affect the ability of the registrant to meet its contractual obligations (detailed discussions of price regulation need not be furnished); (D) any other factors beyond the control of the registrant, such as other parties having control over the drilling of new wells, competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies which may affect the ability of the registrant to acquire additional reserves and supplies, or to maintain or increase the availability of reserves and supplies; and (E) any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractual obligations. See Guide 22 of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 and Guide

1 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934.

(iv) If within the last five years the registrant has been unable to meet any significant delivery commitments, describe the circumstances concerning such events and the impact on the registrant.

[end of Item 2(b)(8)]

#### AUTHORITY

These amendments are adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)) of the Securities Act of 1933; sections 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78l, 78m, 78o(d) and 78w) of the Securities Exchange Act of 1934.

The Commission finds that any changes in the amended rules adopted from those published in Securities Act Release No. 5967 have already been generally subject to comment and are either technical in nature or less burdensome than previous requirements so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

DECEMBER 19, 1978.

[FR Doc. 78-35869 Filed 12-26-78; 8:45 am]



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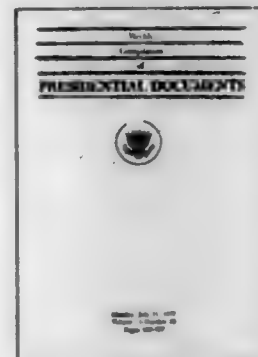
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NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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| 668 | 59483        |
| 825 | 58308        |

## PROPOSED RULES:

|     |       |
|-----|-------|
| 650 | 60298 |
| 772 | 57161 |

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|     |               |
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| 200 | 59838         |
| 201 | 60,150, 60151 |
| 203 | 60152         |
| 204 | 60153         |
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| 220 | 60154         |
| 232 | 60154         |
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| 235 | 60155         |
| 250 | 60154         |
| 340 | 60444         |
| 570 | 60744         |
| 571 | 58734         |
| 886 | 60157         |

## PROPOSED RULES:

|     |                     |
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| 20  | 58592, 60392        |
| 51  | 57619, 60396        |
| 200 | 57619               |
| 201 | 57619, 57622, 59849 |
| 203 | 57619               |

## 24 CFR—Continued

## PROPOSED RULES—Continued

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| 204  | 57619                             |
| 207  | 57619, 58592                      |
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| 221  | 57619                             |
| 232  | 57622                             |
| 234  | 57622                             |
| 235  | 57619                             |
| 250  | 57619, 57622                      |
| 340  | 57622                             |
| 390  | 57619                             |
| 445  | 57619, 60301                      |
| 570  | 57619, 60769                      |
| 590  | 57619                             |
| 803  | 57622, 60588                      |
| 804  | 57619, 60830                      |
| 805  | 57619                             |
| 865  | 57622, 60854, 60856               |
| 869  | 57619                             |
| 870  | 57619, 60301                      |
| 882  | 57619, 57622, 60752               |
| 886  | 57619                             |
| 888  | 57619                             |
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| 1914 | 57619                             |
| 1915 | 57619                             |
| 1916 | 57619                             |
| 1917 | 57619, 60600, 60612               |
| 1920 | 57619                             |

## 25 CFR

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## PROPOSED RULES:

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| 32a | 56249 |
| 700 | 59400 |

## 26 CFR

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| 1   | 59354-59357, 60159, 60445 |
| 6   | 58083                     |
| 31  | 56223, 59359, 60159       |
| 32  | 59360, 60160              |
| 301 | 58815, 59360, 59376       |
| 404 | 60447                     |
| 601 | 57874                     |

## PROPOSED RULES:

|    |       |
|----|-------|
| 1  | 58830 |
| 20 | 59517 |
| 26 | 59849 |
| 31 | 58193 |
| 53 | 59518 |

## 27 CFR

|     |       |
|-----|-------|
| 211 | 58369 |
| 290 | 59826 |

## 28 CFR

|   |       |
|---|-------|
| 0 | 57249 |
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## PROPOSED RULES:

|   |              |
|---|--------------|
| 2 | 56681, 58593 |
|---|--------------|

## 29 CFR

|      |                     |
|------|---------------------|
| 1903 | 59838               |
| 1910 | 56893, 56894, 57601 |
| 1928 | 56894               |
| 2509 | 58565               |
| 2610 | 56894               |

## PROPOSED RULES:

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|------|----------------------------|
| 850  | 58148                      |
| 860  | 58148, 58154               |
| 1910 | 56907, 56909, 56910, 60048 |
| 2530 | 59098                      |
| 2700 | 56682, 57923, 58097        |

## 30 CFR

|    |       |
|----|-------|
| 75 | 56894 |
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## PROPOSED RULES:

|     |       |
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| 250 | 60612 |
| 715 | 56425 |

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|     |       |
|-----|-------|
| 1   | 60274 |
| 2   | 60448 |
| 245 | 59059 |

## 32 CFR

|      |       |
|------|-------|
| 51   | 58083 |
| 207  | 57874 |
| 212  | 58084 |
| 360  | 56894 |
| 363  | 57875 |
| 552  | 59080 |
| 553  | 56861 |
| 818a | 58087 |
| 832  | 59486 |

## PROPOSED RULES:

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| 505 | 59852 |
| 542 | 58832 |
| 552 | 59328 |
| 562 | 59519 |

## 32A CFR

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| 110 | 60457        |
| 117 | 57249        |
| 127 | 57876, 57877 |
| 162 | 60458        |
| 165 | 59487        |
| 183 | 56858        |

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|     |              |
|-----|--------------|
| 110 | 59521        |
| 117 | 57305        |
| 127 | 60614        |
| 130 | 56840, 58833 |
| 131 | 56840, 58833 |
| 162 | 59524        |
| 165 | 60614        |
| 183 | 60850        |

## 35 CFR

|    |       |
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| 10 | 58394 |
|----|-------|

## PROPOSED RULES:

|    |       |
|----|-------|
| 10 | 58394 |
|----|-------|

## 36 CFR

|      |       |
|------|-------|
| 1    | 60252 |
| 7    | 60252 |
| 9    | 57822 |
| 904  | 57877 |
| 1207 | 57250 |

## PROPOSED RULES:

|     |       |
|-----|-------|
| 219 | 58593 |
| 222 | 58387 |
| 231 | 58387 |

## 37 CFR

|     |              |
|-----|--------------|
| 1   | 57886        |
| 201 | 57252, 59378 |

## PROPOSED RULES:

|   |              |
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| 1 | 59401, 60176 |
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## 38 CFR

|    |       |
|----|-------|
| 17 | 57144 |
| 36 | 60459 |

## PROPOSED RULES:

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|---|-------|
| 1 | 57923 |
|---|-------|

## 39 CFR

|     |       |
|-----|-------|
| 111 | 56224 |
| 224 | 60275 |
| 955 | 60275 |

## PROPOSED RULES:

|     |              |
|-----|--------------|
| 111 | 57924, 57925 |
| 310 | 60615        |
| 320 | 60615        |

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| 2  | 59080                                                |
| 52 | 56662, 58188, 58566, 58567, 59063-59066, 59487-59496 |
| 55 | 59839                                                |
| 65 | 56225, 56226, 59497-59499, 59841, 60161, 60461-60465 |

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|-----|---------------------|
| 86  | 57253               |
| 124 | 58066               |
| 180 | 57000, 59067, 60465 |
| 730 | 56663               |
| 762 | 59500               |

## PROPOSED RULES:

|    |                                          |
|----|------------------------------------------|
| 50 | 56250                                    |
| 52 | 56910, 57161, 58203, 58593, 60303, 60305 |

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|-----|-------------------------------------------------------------------------------------------------------|
| 60  | 57834                                                                                                 |
| 65  | 56912, 56913, 56915, 57162-57164, 57306, 57926, 58204, 58389, 59103, 59525-59528, 59852, 60306, 60624 |
| 180 | 56917, 57003, 57004, 57623, 60624                                                                     |
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## 42 CFR

|     |              |
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| 405 | 58370, 59380 |
| 440 | 57253        |

## PROPOSED RULES:

|     |                     |
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| 55  | 56918               |
| 58  | 59530               |
| 85  | 56918               |
| 85a | 56918               |
| 405 | 57166, 57307, 58390 |
| 449 | 57166               |

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|      |              |
|------|--------------|
| 14   | 58292        |
| 1880 | 57886        |
| 2650 | 57144, 57888 |
| 3300 | 58090        |

## PROPOSED RULES:

|      |       |
|------|-------|
| 8370 | 57167 |
| 1600 | 58764 |
| 3400 | 58776 |

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| 5653 | 59756 |
| 5654 | 59756 |

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| 64   | 58376        |
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| 100a | 57254        |
| 100b | 57255        |
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| 116  | 57255        |
| 117  | 57255        |
| 118  | 57255        |
| 119  | 57255        |
| 121  | 57255        |
| 121a | 57255        |
| 121d | 57255        |
| 124  | 57255        |
| 127  | 57255        |
| 129  | 57255        |
| 141  | 57255        |
| 142  | 57255        |
| 160  | 57255        |
| 162  | 57255        |
| 166  | 57255        |
| 170  | 57255        |
| 171  | 57255        |
| 1061 | 60466        |
| 1068 | 57888, 58376 |
| 1069 | 57890, 59844 |

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|------|---------------------|
| 80   | 59105               |
| 84   | 59105               |
| 86   | 58070, 58076, 59105 |
| 90   | 58428               |
| 115  | 58022               |
| 144  | 57308               |
| 161  | 58912               |
| 161a | 58912               |
| 175  | 57308               |
| 176  | 57308               |
| 1067 | 58393               |

## PROPOSED RULES:

|      |                     |
|------|---------------------|
| 80   | 59105               |
| 84   | 59105               |
| 86   | 58070, 58076, 59105 |
| 90   | 58428               |
| 115  | 58022               |
| 144  | 57308               |
| 161  | 58912               |
| 161a | 58912               |
| 175  | 57308               |
| 176  | 57308               |
| 1067 | 58393               |

## PROPOSED RULES:

|      |                     |
|------|---------------------|
| 80   | 59105               |
| 84   | 59105               |
| 86   | 58070, 58076, 59105 |
| 90   | 58428               |
| 115  | 58022               |
| 144  | 57308               |
| 161  | 58912               |
| 161a | 58912               |
| 175  | 57308               |
| 176  | 57308               |
| 1067 | 58393               |

## 46 CFR

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| 50  | 56798 |
| 54  | 56798 |
| 56  | 56798 |
| 58  | 56799 |
| 61  | 56800 |
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| 108 | 56807 |
| 109 | 56821 |
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| 310 | 56663 |
| 502 | 56897 |
| 528 | 60470 |
| 530 | 60471 |
| 540 | 60471 |

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|-----|-------|
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| 1  | 57167, 60625                                                        |
| 2  | 59110, 60307                                                        |
| 67 | 58204                                                               |
| 73 | 56251, 57624, 58099, 58100, 58205, 59113, 59404, 59405, 60308-60310 |
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| 81 | 59110                                                               |
| 83 | 59110, 60307                                                        |
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## 49 CFR

|     |                            |
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| 172 | 56666, 57891, 57900, 60472 |
| 173 | 56668, 57891, 57902, 60472 |
| 174 | 56668, 57903               |
| 175 | 56668, 57903               |
| 176 | 56668, 57903               |
| 177 | 56668, 57904               |
| 178 | 58818                      |
| 215 | 59072                      |
| 221 | 56236                      |
| 270 | 5637                       |
| 301 | 56900                      |
| 391 | 56900                      |
| 571 | 5                          |



|     |                                   |                                          |       |
|-----|-----------------------------------|------------------------------------------|-------|
| 17  | 58030                             | 611                                      | 57148 |
| 21  | 57605                             | 58190, 59075, 59292, 59507, 59845, 60171 | 56238 |
| 33  | 57257, 58190, 59507, 59845, 60278 | 651                                      | 58570 |
| 96  | 60255                             | 652                                      | 59388 |
| 227 | 57147                             | 653                                      | 60474 |
|     |                                   | 671                                      | 57149 |

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| 672                    | 56238 |
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## rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3510-10-M]

## Title 7—Agriculture

SUBTITLE A—OFFICE OF THE  
SECRETARY OF AGRICULTURE

## PART 6—IMPORT QUOTAS AND FEES

## Subpart—Section 22 Import Quotas

DAIRY PRODUCTS AND MILK CHOCOLATE  
CRUMB; CORRECTION

AGENCY: Foreign Agriculture Service, USDA.

ACTION: Correction to final rule.

**SUMMARY:** This corrects the final rule of the import regulation I, revision 6, which was published in the FEDERAL REGISTER on November 22, 1978 established under authority of section 22 of the Agriculture Adjustment Act, as amended. In FR Doc. 78-32804, appearing at page 54900 of the FEDERAL REGISTER, the changes should be made as set forth below.

FOR FURTHER INFORMATION  
CONTACT:

Bryant H. Wadsworth, 202-447-5270.

The corrections are as follows:

1. On page 54900, the fourth sentence of the second paragraph of the SUPPLEMENTARY INFORMATION is corrected to read as follows: "It has therefore been determined by John E. Riess, Acting Deputy Director, Dairy, Livestock and Poultry Division, CP, Foreign Agricultural Service, that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553)."

2. On page 54902, insert immediately before "§ 6.20 Determination" the following additional paragraph:

**AUTHORITY:** Sec. 2, 62 Stat. 1248, as amended, 7 U.S.C. 624; Part 3 of the Appendix to the Tariff Schedules of the United States, 19 U.S.C. 1202.

3. On page 54902, § 6.21(q), eliminate "(effective date)" and insert in lieu thereof "November 22, 1978."

4. On page 54903, delete § 6.25(b)(4).  
5. On page 54907, insert the following additional paragraph immediately before "Signed this 17th day of November 1978": "It is hereby certified that an approved Final Impact State-

ment has been prepared in accordance with Executive Order 12044 and is available from the Office of the Director of Economics, Policy Analysis and Budget, Room 112, Administration Building, USDA, Washington, D.C. 20250."

Signed this 21st day of December 1978.

THOMAS R. HUGHES,  
Administrator,  
Foreign Agricultural Service.

[FR Doc. 78-36072 Filed 12-27-78; 8:45 am]

[3410-02-M]

CHAPTER 1—AGRICULTURAL MAR-  
KETING SERVICE (STANDARDS, IN-  
SPECTION, MARKETING SERVICE,  
DEPARTMENT OF AGRICULTURE)

## SUBCHAPTER E—WAREHOUSE REGULATIONS

## PART 102—GRAIN WAREHOUSES

AGENCY: Agricultural Marketing Service.

ACTION: Amendment of regulations.

**SUMMARY:** At 43 FR 14005, April 4, 1978, the Agricultural Marketing Service adopted a final rule relating to licensing of grain inspectors and weighers. This document adds the authority citation under which that amendment was issued.

DATE: April 4, 1978.

FOR FURTHER INFORMATION  
CONTACT:

Mr. Rex Willis, Warehouse Service Branch, Transportation & Warehouse Division—AMS 447-3616.

**SUPPLEMENTARY INFORMATION:** The proper authority citation for the rule document published at 43 FR 14005 is as follows: (Aug. 11, 1916, ch. 313, part C, § 28, 39 Stat. 490 (7 U.S.C. 288)).

Done at Washington, D.C., December 21, 1978.

WILLIAM T. MANLEY,  
Deputy Administrator,  
Marketing Program Operations.

[FR Doc. 78-36127 Filed 12-27-78; 8:45 am]

[3410-08-M]

CHAPTER IV—FEDERAL CROP INSUR-  
ANCE CORPORATION, DEPART-  
MENT OF AGRICULTURE

[Amdt. No. 1]

## PART 411—GRAPE CROP INSURANCE

Subpart—Regulations for the 1977  
and Succeeding Crop Years

## CLOSING DATES

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** This rule changes the closing date for accepting applications for grape crop insurance in certain counties in California under the authority contained in the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years. Such closing dates are changed for the 1979 crop year only due to the shortness of time available for accepting such applications.

**EFFECTIVE DATE:** December 28, 1978.

FOR FURTHER INFORMATION  
CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

**SUPPLEMENTARY INFORMATION:** Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, et seq.), the Federal Crop Insurance Corporation is amending its regulations as found in 7 CFR Part 411, the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 36792, September 1, 1976), to provide a closing date of January 10, 1979, for accepting applications for grape crop insurance in Merced and Stanislaus Counties, California. The normal closing date is December 10 for accepting such applications; however, since this is a new program being offered for the first time in Merced and Stanislaus Counties, California, for the 1979 crop year, sufficient time should be allowed for all potential policyholders to learn about the available offer of insurance. This change of closing dates from Decem-



(Navel Orange Regulation 446)

**PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA****Limitation of Handling**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 29, 1978-January 4, 1979. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

**SUPPLEMENTARY INFORMATION:** Findings. Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of navel oranges, as hereafter provided, will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on December 22, 1978 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is dull.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon

which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.746 Navel Orange Regulation 446.

**Order.** (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period December 29, 1978 through January 4, 1979, are established as follows:

- (1) District 1: 500,000 cartons;
- (2) District 2: 43,006 cartons;
- (3) District 3: unlimited movement.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1-19, 46 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: \_\_\_\_\_

*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 78-\_\_\_\_\_ Filed \_\_\_\_\_ 78; \_\_\_\_\_ am]

**[3410-02-M]****CHAPTER IX—AGRICULTURAL MARKETING SERVICE [MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS], DEPARTMENT OF AGRICULTURE****PART 982—HANDLING OF FILBERTS GROWN IN OREGON AND WASHINGTON****Free and Restricted Percentages for the 1978-79 Marketing Policy Year; Correction**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

**SUMMARY:** In FR Doc. 78-34174 appearing at page 57240 in the FEDERAL REGISTER of December 7, 1978, a change should be made in the citation of the regulation. Section 982.228 should be renumbered as § 982.228.

Dated: December 21, 1978.

*CHARLES R. BRADER,  
Deputy Director, Fruit  
and Vegetable Division.*

[FR Doc. 78-36182 Filed 12-27-78; 8:45 am]

**[4410-10-M]****Title 8—Aliens and Nationality****CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE****PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS****Submission of Aircraft-Vessel Reports (Forms I-92) for Direct Flights Between the United States and Canada**

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; clarification of rulemaking proceeding.

**SUMMARY:** This document is being published in order to clarify the status of the rulemaking proceedings relative to the submission of Forms I-92 (Aircraft/Vessel Reports) for passengers on direct flights between the United States and Canada. This document is necessary to prevent publication of the material published at 43 FR 30268-69 on July 14, 1978 in the annual compilation of the Code of Federal Regulations. That document should be considered as a notice of proposed rulemaking. It is currently under review by the Service pursuant to the proposed rulemaking provisions of the Administrative Procedure Act.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 376-8373.

**SUPPLEMENTARY INFORMATION:** On July 14, 1978 at 43 FR 30268 the Immigration and Naturalization Service published "final" rules amending 8 CFR 231.1(b) and 8 CFR 231.2(b) relating to the required submission of Forms I-92 (Aircraft/Vessel Reports) for passengers on direct flights between the United States and Canada. These rules were published to become effective immediately upon publication. However, the Air Transport Association requested and was granted a two month period of time in which to submit representations to the Service. As a result of this request the Service published on July 28, 1978, an order in the FEDERAL REGISTER at 43 FR 32741 for the purpose of staying the "final" rule of July 14, 1978 and to request comments from the public for a period of 60 days to expire on September 26, 1978.

The Office of the Federal Register has advised the Service that the order published July 28, 1978 does not prevent the publication of the "final" regulations of July 14, 1978 in the Code of Federal Regulations revised as of January 1, 1979. This order, therefore, is published for the sole purpose of withdrawing the "final" rules of July 14, 1978 to prevent their publication in the annual compilation of the Code of Federal Regulations effective as of January 1, 1979. The Service desires and requests that the "final" rules of July 14, 1978 be considered as proposed regulations and indexed as such by the Office of the Federal Register.

Accordingly, the "final" rules amending 8 CFR 231.1(b) and 8 CFR 231.2(b) published on July 14, 1978 at 43 FR 30268 are withdrawn.

Dated: December 21, 1978.

*LEONEL J. CASTILLO,  
Commissioner of Immigration  
and Naturalization.*

[FR Doc. 78-36177 Filed 12-27-78; 8:45 am]

**[4910-13-M]****Title 14—Aeronautics and Space****CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

[Airspace Docket No. 78-ASW-48]

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS****Designation of Transition Area: Giddings, Tex.**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** The nature of the action being taken is to designate a transition area at Giddings, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Giddings-Lee County Airport. The circumstance which created the need for the action was a requirement to provide capability for flight under instrument weather conditions to the airport. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR) status.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

David Gonzalez, Airspace and Procedures Branch (ASW-535), Air Traf-

fic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101; telephone 817-624-4911, extension 302.

**SUPPLEMENTARY INFORMATION:****HISTORY**

On October 23, 1978, a notice of proposed rule making was published in the FEDERAL REGISTER (43 FR 49310) stating that the Federal Aviation Administration proposed to designate the Giddings, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received and one commentator objected to the proposal.

**DISCUSSION OF COMMENTS**

The Department of Air Force representative objected to the proposed rule. The commentator expressed concern because of the effect the proposal may have on the Camp Swift Military Operations Area (MOA) training activity. The normal use time of the MOA is eight hours a week, 1000-1200 and 1400-1600, Wednesdays and Thursdays. The MOA activity is conducted only in visual meteorological conditions (VMC), when instrument operations at Giddings-Lee County Airport would normally be unnecessary. When the MOA is in use, nonparticipating IFR traffic is not authorized transit unless it can be separated/segregated from the MOA activity. Therefore, the Federal Aviation Administration has determined that IFR use of the common controlled airspace can be handled without impacting the MOA user and with minimal effect, if any, on nonparticipating IFR traffic. Except for editorial changes, this amendment is that proposed in the notice.

**THE RULE**

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) designates the Giddings, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Giddings-Lee County Airport.

**ADOPTION OF THE AMENDMENT**

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 GMT, February 22, 1979, as follows:

In Subpart G, 71.181 (43 FR 440), the following transition area is added:

ber 10 to January 10 is effective for the 1979 crop year only and will provide sufficient time for accepting applications for grape crop insurance. Under the provisions of § 411.3 the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (7 CFR Part 411), the Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county, by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity will result during the period of such extension, provided that if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications. No adverse conditions presently exist.

Inasmuch as this extension of the sales closing date will only affect those producers who may be applying for grape crop insurance, the Corporation has found and determined that compliance with the provisions for notice and public participation would be impracticable, unnecessary, and contrary to the public interest, and that good cause exists for issuing this Amendment No. 1 as a final rule. Therefore, this amendment is hereby issued without compliance with such procedure.

**FINAL RULE**

Accordingly, § 411.3 of the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (7 CFR Part 411), is hereby amended by adding at the end thereof, the following:

• • • The closing date for accepting applications for grape crop insurance for the 1979 crop year only is hereby extended until the close of business on January 10, 1979.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.)

*PETER F. COLE,  
Secretary, Federal Crop  
Insurance Corporation.*

[FR Doc. 78-36048 Filed 12-27-78; 8:45 am]

**[3410-02-M]****CHAPTER IX—AGRICULTURAL MARKETING SERVICE [MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS], DEPARTMENT OF AGRICULTURE**



## GIDDINGS, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Giddings-Lee County Airport (latitude 30°10'11" N., longitude 96°58'51" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Fort Worth, Tex., on December 13, 1978.

PAUL J. BAKER,  
Acting Director,  
Southwest Region.

[FR Doc. 78-35939 Filed 12-27-78; 8:45 am]

## [4910-13-M]

[Airspace Docket Number 78-CE-32]

# **PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW POINT ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS**

## **Alteration of Control Zone, Sioux City, Iowa**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the designation of the Sioux City, Iowa Control Zone from a continuous to a part-time control zone. This action is necessary because the National Weather Service is reducing their staffing, and consequently its hours of operation. Since aviation weather would not be provided for the control zone when the National Weather Service is closed, it is necessary that the control zone be designated part-time to coincide with the Weather Service's hours of operation.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the designation of the Sioux City, Iowa Control Zone from a con-

tinuous to a part-time control zone. The National Weather Service has advised that they are reducing their staffing at Sioux City, Iowa and effective March 4, 1979, weather observations and forecasts will not be available between the hours of 0000 and 0600 local time. Since the Airport Traffic Control Tower is operational from 0700 to 0000, it is not possible for FAA to provide aviation weather during the time the National Weather Service is closed. Accordingly, it is necessary that the control zone be designated part-time. The control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport Facility Directory. Since there is no present alternative to this action, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest and good cause exists for making this amendment effective before January 29, 1979.

Accordingly, Subpart F, Section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), is amended, effective 0901 GMT, February 22, 1979, by altering the following control zone:

### **SIoux CITY, IOWA**

Within a 5-mile radius of Sioux City Municipal Airport (latitude 42°24'03" N; longitude 96°22'55" W) and within 2 1/4 miles each side of the Sioux City VORTAC 140° radial, extending from the 5-mile radius zone to 6 miles southeast of the VORTAC. This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airport Facility Directory.

There are no alternatives to this action; therefore, notice and public procedure under 5 USC 553(b) is impractical and contrary to the public interest and good cause exists for making this amendment effective in less than thirty (30) days after its publication.

(Section 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Section 8(c), Department of Transportation Act (49 U.S.C. 1655(c)); Section 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Missouri, on December 15, 1978.

C. R. MELUGIN, Jr.,  
Director, Central Region.

[FR Doc. 78-36068 Filed 12-27-78; 8:45 am]

## [4910-13-M]

[Airspace Docket No. 78-EA-56]

# **PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

## **Alteration and Revocation of VOR Federal Airways**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes victor airway V-35W in the vicinity of Morgantown, W. Va.; realigns victor airway V-37 in the vicinity of Elkins, W. Va.; and extends victor airway V-469 from Elkins to Johnstown, Pa. This action will aid flight planning, improve traffic flow in the Pittsburgh, Pa., terminal area and reduce controller work load.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8525.

SUPPLEMENTARY INFORMATION:

### **HISTORY**

On October 23, 1978, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke an airway in the vicinity of Morgantown, W. Va., area and realign two airways in the vicinity of Elkins, W. Va. (43 FR 49314). Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. Two comments were received and neither stated an objection to the proposal. This amendment is the same as that proposed in the notice. Section 71.123 was republished in the **FEDERAL REGISTER** on January 3, 1978, (43 FR 307).

### **THE RULE**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes V-35W in the vicinity of Morgantown, W. Va.; realigns V-37 in the vicinity of Elkins, W. Va.; and extends V-469 from Elkins to Johnstown, Pa. This amendment will reduce the airway distance between Elkins and Ellwood City, Pa., approximately six miles and increase the lateral separation between arriving and departing aircraft in the Pittsburgh, Pa., termi-

nal area. Subpart C of Part 71 was republished in the **FEDERAL REGISTER** on January 3, 1978, (43 FR 307).

### **ADOPTION OF THE AMENDMENT**

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 307) and amended (42 FR 60123) is further amended, effective 0901 GMT, February 22, 1979, as follows:

Under V-35, "including a west alternate from Morgantown to Johnstown via INT Morgantown 010° and Johnstown 260° radials"; is deleted.

Under V-37, "Morgantown, W. Va.; INT Morgantown, 331° and Ellwood City, Pa., 185° radials" is deleted and "Clarksburg, W. Va.; INT Clarksburg 350° and Ellwood City, Pa., 185° radials"; is substituted therefor.

Under V-469, "to Elkins," is deleted and "Elkins; Morgantown, W. Va.; INT Morgantown 010° and Johnstown, Pa., 260°; to Johnstown," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 20, 1978.

WILLIAM E. BROADWATER,  
Chief, Airspace and Air  
Traffic Rules Division.

[FR Doc. 78-36070 Filed 12-27-78; 8:45 am]

## [4910-13-M]

[Airspace Docket No. 78-SW-50]

# **PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

## **PART 73—SPECIAL USE AIRSPACE**

### **Establishment of Temporary Restricted Areas and Alteration of Continental Control Area**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish four temporary joint use restricted areas in the vicinity of Fort Hood, Tex., and alter the Continental Control Area, where necessary, to contain a military joint readiness exercise called BRAVE SHIELD 19. These actions will provide for safe and efficient use of the navigable airspace by pro-

hibiting unauthorized flight operations of nonparticipating aircraft within the areas during the time the exercise is in operation.

EFFECTIVE DATE: February 22, 1979. Period of designation is April 5, 1979, through April 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

### **HISTORY**

On November 13, 1978, (43 FR 52496) the FAA published for comment a notice of proposed rulemaking to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to designate four temporary restricted areas identified as R-6303A, R-6303B, R-6303C and R-6303D in the vicinity of Fort Hood, Tex., to contain a military joint service exercise and to include these restricted areas in the Continental Control Area for the duration of their times of designation. A majority of the air activities will be within the Fort Hood Military Reservation permanently designated as R-6302A/B/C/D/E. Section 71.151 and § 73.63 were republished in the **FEDERAL REGISTER** on January 3, 1978, (43 FR 344 and 704). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

### **THE RULE**

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate temporary restricted areas in the vicinity of Fort Hood, Tex., in order to protect nonparticipating aircraft during the time that BRAVE SHIELD 19 readiness exercise is in operation. Also, the airspace at and above 14,500 feet MSL within these temporary restricted areas during the designated period is included in the Continental Control Area.

### **ADOPTION OF THE AMENDMENT**

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart D of Part 71 and Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (43 FR 344 and 704) are amended, effective 0901 GMT, February 22, 1979, as follows:

Under § 71.151 (43 FR 344) the following temporary restricted areas are added for the duration of their time of designation from

0600 local time, April 5, 1979, to 2359 local time, April 13, 1979:

R-6303A BRAVE SHIELD 19, Tex.  
R-6303B BRAVE SHIELD 19, Tex.  
R-6303C BRAVE SHIELD 19, Tex.  
R-6303D BRAVE SHIELD 19, Tex.

Under § 73.63 (43 FR 704) the following temporary restricted areas are added:

R-6303A BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 31°09'00"N., Long. 97°55'00"W.; to Lat. 31°16'00"N., Long. 97°54'00"W.; to Lat. 31°19'00"N., Long. 97°51'00"W.; to Lat. 31°24'00"N., Long. 97°48'00"W.; to Lat. 31°23'00"N., Long. 97°43'00"W.; to Lat. 31°21'00"N., Long. 97°41'00"W.; to Lat. 31°20'00"N., Long. 97°41'00"W.; to Lat. 31°14'00"N., Long. 97°33'00"W.; to Lat. 31°06'00"N., Long. 97°33'00"W.; to Lat. 31°08'00"N., Long. 97°39'00"W.; to Lat. 31°10'00"N., Long. 97°41'00"W.; to Lat. 31°09'30"N., Long. 97°43'00"W.; to Lat. 31°09'00"N., Long. 97°43'30"W.; to the point of beginning, excluding airspace 4,000 feet MSL and below within a 5 NM radius of the Hood, Tex., VOR, within a 5 NM radius of the Fort Hood AAF (31°08'15"N., 97°42'50"W.) but south of R-6302 boundary, and within 5 NM each side of the Hood, Tex., VOR 102°T and 125°T radials extending from the VOR to V-17 airway.

Designated altitudes. Surface to and including FL 180.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6303B BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 31°30'00"N., Long. 97°46'00"W.; to Lat. 31°48'15"N., Long. 97°46'00"W.; to Lat. 31°30'00"N., Long. 97°37'45"W.; to Lat. 31°13'45"N., Long. 97°30'00"W.; to Lat. 30°50'00"N., Long. 97°37'00"W.; to Lat. 30°50'00"N., Long. 98°03'30"W.; to Lat. 31°07'00"N., Long. 97°45'30"W.; to point of beginning, excluding, R-6302 and airspace 4,000 feet MSL and below within 5 NM radius of Fort Hood AAF (30°08'15"N., 97°42'50"W.) and within 5 NM radius of the Hood, Tex., VOR, within 5 NM each side of the Hood, Tex., VOR 102°T and 125°T radials extending from the VOR to V-17 airway. The airspace 1,200 feet AGL and below within 3 NM of all airports is excluded.

Designated altitudes. 100 feet AGL to and including FL 180.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6303C BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 30°50'00"N., Long. 98°10'00"W.; to Lat. 31°30'00"N., Long. 98°10'00"W.; to Lat. 31°30'00"N., Long. 97°46'00"W.; to Lat. 31°07'00"N., Long. 97°45'30"W.; to Lat. 30°50'00"N., Long. 98°03'30"W.; to point of beginning, excluding, R-6302A/B/C 18,000 feet MSL and below, and airspace within 5 NM radius of Fort Hood AAF (31°08'15"N., 97°42'50"W.) and within 5 NM radius of the Hood, Tex.,



VOR. The airspace 1,200 feet AGL and below within 3 NM of all airports is excluded.

Designated altitudes. 100 feet AGL to and including FL 250.

Time of designation. Intermittent, 0000 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23065.

R-6303D BRAVE SHIELD 19, Tex.  
Boundaries. Beginning at Lat. 31°03'18"N., Long. 99°16'00"W.; to Lat. 31°18'15"N., Long. 99°16'00"W.; to Lat. 31°20'45"N., Long. 99°14'00"W.; to Lat. 31°20'45"N., Long. 99°07'45"W.; to Lat. 31°25'30"N., Long. 99°45'45"W.; to Lat. 32°03'00"N., Long. 98°49'00"W.; to Lat. 32°03'00"N., Long. 97°52'45"W.; to Lat. 31°48'15"N., Long. 97°46'00"W.; to Lat. 31°30'00"N., Long. 97°46'00"W.; to Lat. 31°30'00"N., Long. 98°10'00"W.; to Lat. 30°50'00"N., Long. 98°10'00"W.; to Lat. 30°50'00"N., Long. 98°20'30"W.; to Lat. 30°58'00"N., Long. 98°52'00"W.; to point of beginning. The airspace 1,200 feet AGL and below within 3 NM of all airports is excluded.

Designated altitudes. 500 feet AGL to and including FL 250.

Time of designation. Intermittent, 0000 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23065.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C. on December 21, 1978.

WILLIAM E. BROADWATER,  
Chief, Airspace and Air  
Traffic Rules Division.

[FR Doc. 78-38071 Filed 12-27-78; 8:45 am]

#### [6320-01-M]

#### Title 14—Aeronautics and Space

#### CHAPTER II—CIVIL AERONAUTICS BOARD

#### SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1088; Amdt. No. 64]

#### PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

##### Fuel Surcharge Rate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule establishes a 0.37 percent fuel surcharge rate applicable to the minimum military charter rates (ER-1045, December 27, 1977) for foreign and overseas air transportation services performed for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC). This surcharge amendment is triggered by the increase in average fuel price for the participating MAC carriers of 1.08 cents per gallon—from 41.31 cents per gallon to 42.39 cents per gallon.

DATES: Adopted: December 21, 1978. Effective: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Leonard S. Friedman, Postal and Military Rates Division, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, Phone: 202-673-5368.

SUPPLEMENTAL INFORMATION: As indicated in ER-1024 (42 FR 58902, November 11, 1977), dated November 3, 1977, the Board monitors fuel price changes and will establish a fuel surcharge rate adjustment when the average price of fuel for participating MAC carriers changes one cent or more per gallon. The latest Form 41 data, for the month of October 1978, indicate that the average fuel price for MAC services has increased 1.08 cents over the price used to set the present rates.<sup>1</sup> Although there have been revisions in the MAC rate structure since we adopted the surcharge procedure,<sup>2</sup> the methodology remains valid. In reaching this decision, we have reviewed the relationship of fuel costs to total economic costs for each of the major rate elements. First, we considered the impact of fuel cost on total economic costs separately for the two sets of seating densities used in setting MAC rates. As set out in Appendices B and C, the seating density difference

<sup>1</sup>The base fuel prices reflected in the current rates are for the month of April 1977.

<sup>2</sup>Notices dated September 8, 1978 and December 22, 1978, Docket 29759.

produces an insignificant variance in the fuel cost ratio, 28.51% and 28.74%, respectively. Second, we considered the ratios of fuel cost to total cost for the separate rates for standard and stretched jet equipment. However, as can be seen in Appendix B, the ratios for the two standard jet operators, Northwest 29.34% and Pan American 24.27%, are not significantly dissimilar to that for the stretched jet carriers or for the industry, 28.51%. Finally, we have considered the impact of a succession of surcharge amendments of the rates on the ratio of fuel costs to total economic costs. To avoid compounding the surcharges, they must be computed from a fixed base. For this purpose, we believe the fuel prices for the month of April 1977 and the total economic costs for the current MAC seating densities, reflecting 24 months cost escalation, as prescribed in ER-1024, provide a satisfactory base for computing the surcharges. We conclude that a uniform fuel surcharge applicable to all the military rates as applied in the past, continues to be reasonable.

Accordingly, the Board has completed its review of the latest available fuel cost data as reported on C.A.B. Form 41, Schedule P-12(a) for foreign and overseas MAC air transportation services for the month of October 1978, and in establishing surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.<sup>3</sup> The basis for issuing this surcharge amendment is the increase in average fuel price for the participating MAC carriers of 1.08 cents per gallon—from 41.31 cents per gallon reflected in the currently effective base rates to the latest reported average price of 42.39 cents per gallon.

Appendix A<sup>4</sup> sets forth the results of the surcharge rate computation for the reported fuel price changes for commercial and military fuels consumed in military charter service for the month of October 1978, and the rate impact for the changes in current average fuel prices from those reflected in the base rates. Accordingly, we will establish the fuel surcharge rate applicable to the current base final rates, effective December 21, 1978, to increase the Category B and Category A rates by 0.37 percent.

In view of the present need for a fuel surcharge to the minimum rates set forth in Part 288, we find good cause exists to make these amendments effective on less than thirty (30) days' notice.

<sup>3</sup>This and future surcharge amendments will be made applicable to the minimum MAC rates established in ER-1045, effective December 27, 1977, until such time as new final base rates are established.

<sup>4</sup>Appendices A through D filed as part of the original document.

In consideration of the foregoing, the Board amends Part 288 of its Economic Regulations (14 CFR Part 288) effective December 21, 1978 as follows:

1. Amend § 288.7(a) by revising the paragraph following the tables so as to reflect an additional proviso, the amended paragraph to read as follows:

§ 288.7 Reasonable level of compensation.

- (a) . . .
- (1) . . .
- (2) . . .

*Provided*, That subject to the provisions of § 288.8, the minimum rates set forth above shall not be applicable to passengers or cargo carried on a particular trip in excess of the amount that the contract calls for DOD to supply and the carrier to provide space. *And provided further*, That if a carrier performs a one-way charter flight carrying nonmilitary traffic for a nonmilitary user, the carrier may charter the return flight of that aircraft to DOD at a published one-way charter traffic rate that is in fact available to the general public for equivalent services. *Provided, however*, That effective December 31, 1978 the total minimum compensation pursuant to the rates set forth in subparagraph (1) above for services performed with regular jet, wide-bodied jet and DC-8-61/43 aircraft shall be increased by a surcharge of 0.37 percent.

2. Amend § 288.7(d) (1) and (2) to add a proviso and to read as follows:

§ 288.7 Reasonable level of compensation

- (d) . . .
- (1) . . .
- (2) . . .

*Provided*, That effective December 21, 1978, the total minimum compensation pursuant to the rates specified in subparagraphs (1) and (2) of this paragraph shall be increased by a surcharge of 0.37 percent.

(Secs. 204, 403, 416, Federal Aviation Act of 1958, as amended; 72 stat. 743, 758 and 771, as amended; (49 U.S.C. 1324, 1373 and 1386).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36045 Filed 12-27-78; 8:45 am]

[6320-01-M]

[Regulation PR-187; Amendment No. 47 of Part 302]

#### PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In PR-186, issued today, the Board established procedures for applications for automatic market entry. By this notice the Board is amending its Rules of Practice (Part 302, Subpart I) to except the automatic entry applications from the general route application rules.

DATES: Effective: December 29, 1978. Adopted: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: The general rules for route applications contained in 14 CFR Part 302, Subpart I, are meaningful only for applications upon which hearings might be held, and it is not expected that hearings will be held in automatic market entry applications. Since this amendment is administrative in nature, affecting a rule of agency practice and procedure, and must take effect at the same time as PR-186, the Board finds that notice and public procedure are unnecessary and an effective date of less than 30 days from issuance is in the public interest.

Accordingly, in 14 CFR Part 302, Subpart I, the Civil Aeronautics Board amends § 302.901, *Applicability*, effective December 29, 1978, so that it reads:

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. However, this subpart does not apply to applications for automatic market entry under section 401(d)(7) of the Act and Part 322 of this chapter. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act and to the substantive rules (see Parts 201 and 211 of the Economic Regulations as to the form of applications) and orders of the Board.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36216 Filed 12-27-78; 8:45 am]

[6320-01-M]

[Regulation PR-186]

#### PART 322—AUTOMATIC MARKET ENTRY PROCEDURES

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board is adding a new Part 322 to establish a procedure for the Automatic Entry Program. The rule governs the filing of Automatic Entry Applications and Protective Notices. It also fixes the time for the commencement of the 60-day period for Board action on these applications.

DATES: Effective: December 29, 1978. Adopted: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: The Airline Deregulation Act of 1978 (P.L. 95-504) adds a new paragraph (7) to section 401(d) of the Federal Aviation Act of 1958, 49 U.S.C. 1371(d), establishing an automatic market entry (AME) program. Under this provision, a carrier may apply to the Board each year for the next 3 years for one new route. It will automatically be awarded a certificate for the route, regardless of the number of other carriers also serving it, unless the Board determines that the applicant is not fit, willing, and able to provide nonstop service and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board issued under the Act.

Applications may be submitted beginning on the second business day of 1979. There are two rounds each year for filing these applications. The first round ends at the close of business on the last business day before January 30th. The second round begins for a carrier on the day that it is denied a certificate for the route it applied for in the first round, or on the day it receives a certificate for a route for which another carrier is also receiving an AME certificate. The second round ends for all carriers on the last business day falling on or before the 120th day (including weekends and holidays) of the calendar year.



If a carrier receives a certificate for a new route in the second round, the certificate it received in the first round is revoked. Thus, an air carrier can receive only one new route per year under the automatic entry program. Entry into additional markets under other portions of the Act, however, is not affected.

Paragraph (7) also includes a procedure for a carrier to protect one of its presently certificated routes from entry under this program. The carrier must file a notice on the first business day of the calendar year. The notice protects only one route during that year, and only from competition under the Automatic Entry Program. Another carrier is not precluded from gaining entry to the protected market under other portions of the Act.

By this action the Board adds a new Part 322, *Automatic Market Entry Procedures*, to the Procedural Regulations. These rules include requirements for AME applications under sections 401(d)(7)(A) and (7)(B) and for protective notices under 401(d)(7)(C).

The Act provides two periods per year during which carriers may file applications for automatic entry. These two periods, designated the first and second rounds in the rule, give the carriers some opportunity to avoid duplication in their selections.

The rules will allow the carriers to submit as many applications as they wish during both the first and second rounds. Only the route indicated in the last application filed can be granted and all prior applications will be considered withdrawn. The applications will be posted on a public bulletin board by the Docket Section. By this procedure a carrier will be able to adjust its filings, and hence will be more likely to end up with a certificate for a route that it actually is willing to serve. Not allowing adjustments would increase the likelihood of certain markets being so overcrowded that the authority received under the AME program would go unused.

Protective notices must be filed with the Docket Section on the first business day of the calendar year. The Docket Section, will, as is its practice, promptly post these notices on the public bulletin board.

The Board is not, however, allowing the resubmission of protective notices by incumbent carriers. The basic Congressional intent of allowing each carrier to protect one route that it considers important is served by allowing one filing. In our judgment, allowing incumbents to arrange and rearrange their protective notices so that the maximum number of routes overall are protected serves neither the specific intent of the route-protection provision nor the goal of free route entry.

Since air carriers will presumably be withdrawing and refiling applications, the Board will wait until the end of each round before beginning its determination of the carrier's fitness. If a carrier wants the 60-day period for the Board's fitness determination to start sooner, it can file a waiver, either with its application or at any time afterwards. The Board will begin the fitness determination upon receiving the application and the waiver, and will grant or deny the certificate within 60 days of the filing of the waiver. Any additional applications by that carrier filed after the Board has received the waiver will not be considered at all. The carrier will have to wait for the second round, if it qualifies, or for the next year, to file any additional AME application.

Each application must identify the route being applied for by naming the pair of points involved. If one of the points is presently a hyphenated point in the existing national route system, a carrier may apply for and receive authority under the Automatic Entry Program to serve each designated airport.

The application must also include information relative to the carrier's fitness, willingness, and ability to provide scheduled service. Those carriers that have already been found fit, willing, and able to provide scheduled service by the Board need only cite the most recent Board order establishing that finding. Other carriers must provide material to support such a finding. In making this showing, the carrier need not resubmit material that it submitted in a prior fitness proceeding, but can incorporate such material by reference into its application.

Shortly after either receiving a waiver from an air carrier or the end of the round, a show-cause order will be issued by the Board as to why the applicant air carrier should not be found fit, willing, and able to provide the nonstop service for which it is applying. It is presently intended that the show-cause orders will give interested persons 10 days (including weekends and holidays) to file objections in the Docket Section and give the air carrier involved 5 days to file a reply.

Section 322.7 declares that applicants for automatic market entry need not file the environmental evaluations and energy information usually required by 14 CFR 312.12 and 313.5. In the Automatic Entry Program Congress has directed the Board to certify all applicants that are fit, willing, and able to provide the nonstop service for which they applied. Because the Board has no discretion to deny a certificate to a qualified applicant, granting certificates under sections 401(d)(7)(A) and (7)(B) cannot be construed as a major Federal Action

within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). It is therefore unnecessary to determine whether granting these certificates will have a significant impact on the quality of the human environment, as NEPA requires when a major Federal action is being considered.

Having made this finding, we believe that the environmental evaluations normally required of route applicants would impose an undue burden on them here. However, if unusual circumstances exist, our staff will prepare an analysis of the environmental and energy implications in particular cases.

In a separate notice, PR-187, we are also amending Sec. 302.901 of the Rules of Practice (14 CFR 302.901) to exclude applications filed under this new part from the coverage of Subpart I. That rule is meaningful only for applications upon which hearings might be held, and we do not expect to hold hearings in automatic market entry proceedings.

Because of the need to have these rules in effect before January 2, 1979, when the first notices will be filed under the statute, we find that notice and public procedure are impracticable and contrary to the public interest, and that an effective date of less than 30 days from issuance is in the public interest.

This program requires air carriers to prepare and submit certain information to the Board in order to apply. By publishing this final rule, we have determined that this information is necessary in conducting the program and must be prepared and submitted. Accordingly, these application and notice requirements, found in §§ 322.2, 322.3, and 322.6 are adopted subject only to review by the General Accounting Office, pursuant to 44 U.S.C. 3512. These specific requirements will be effective immediately, along with the rest of Part 322. Interested persons are not precluded from applying for new routes. However, GAO will conduct its clearance review to ensure that a minimum burden is imposed upon applicants and that the information required is otherwise consistent with the Federal Reports Act. We will publish a notice of GAO's decision.

Accordingly, the Civil Aeronautics Board adds a new Part 322, *Automatic Market Entry Procedures*, to Title 14 of the Code of Federal Regulations, effective December 29, 1978, as set forth below:

#### PART 322—AUTOMATIC MARKET ENTRY PROCEDURES

- Sec.  
322.1 Applicability.  
322.2 First-round applications.  
322.3 Second-round applications.

Sec.

- 322.4 Waiver.  
322.5 Board action.  
322.6 Protective notices.  
322.7 Environmental evaluations and energy information not required.  
322.8 No conflict with separation of functions rule.  
322.9 Conformity with Subpart A of Part 302.

AUTHORITY: Sec. 204, 401 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 49 U.S.C. 1324, 1371.

#### § 322.1 Applicability.

This subpart applies to applications filed by air carriers for authority to serve new nonstop routes under the Automatic Market Entry (AME) Program (Section 401(d)(7)(A) and (7)(B) of the Act) and to notices filed by incumbent carriers to protect presently certificated routes from automatic entry under this program (Section 401(d)(7)(C)).

#### § 322.2 First-round applications.

(a) To obtain a route under the AME program an air carrier shall, during the period (the "first round") that begins at the opening of business on the second business day of the calendar year and ends at the close of business on the last business day before January 30th of that year, file in the Docket Section an application titled "Application for Automatic Market Entry-First Round."

(b) The contents of the application shall be as follows:

- (1) All applications shall indicate the pair of points between which the applicant seeks nonstop route authority under the program.
- (2) Applications from carriers already found by the Board to be fit, willing, and able to provide scheduled service shall cite the most recent Board order establishing that finding.
- (3) Applications from carriers not yet found by the Board to be fit, willing, and able to provide scheduled service shall include material to support such a finding. In making this showing, the carrier may incorporate by reference material submitted in a prior proceeding before the Board.
- (c) An air carrier may withdraw any first-round application by filing a subsequent application during that round.

#### § 322.3 Second-round applications.

(a) If an air carrier did not receive a certificate for the route indicated in its first-round application, or if it did receive such a certificate but was not the only air carrier to receive an AME certificate for that route during that round, the carrier may, during the period (the "second round") that begins at the opening of business on the day that the carrier is denied a certificate or receives the duplicative award and ends at the close of the last business day that is on or before the

120th day of the calendar year, apply for another route by filing in the Docket an application titled "Application for Automatic Market Entry-Second Round."

(b) The contents of these applications shall be as set forth in § 322.2(b).

(c) An air carrier may withdraw any second-round application by filing a subsequent application during that round.

#### § 322.4 Waiver.

(a) An air carrier that has filed an application during either round may, during that round, waive its right to withdraw that application by filing in the Docket Section a statement to that effect, titled "Waiver of Right to File Additional Automatic Entry Applications."

(b) If such a waiver is filed:

- (1) No additional applications may be filed by that carrier during that round, and
- (2) The 60-day period for Board action on the application will begin to run.

#### § 322.5 Board action.

After receiving an application for an AME certificate, the Board will either issue the certificate applied for, or make a negative determination as specified in section 401(d)(7) of the Act. Board action will be taken not later than 60 days after the date of filing of a waiver under § 322.4 or, if no waiver is filed, the end of the round in which the application is filed.

#### § 322.6 Protective notices.

(a) An air carrier may prevent any other air carrier from obtaining AME authority to serve one of its routes by filing in the Docket Section, on the first business day of the calendar year, a notice titled "Automatic Market Entry Protective Notice."

(b) Each protective notice shall indicate the pair of points between which the air carrier seeks to prevent any other air carrier from obtaining AME authority during that calendar year.

(c) The first protective notice filed by an air carrier on the first business day of the calendar year shall be effective, and any other protective notices filed by that air carrier on that day shall be void.

#### § 322.7 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this title, a person filing an application under this subpart is not required to file an environmental evaluation or energy information with the application.

§ 322.8. No conflict with separation of functions rule.

Actions taken by the Bureau of Pricing and Domestic Aviation to administer section 401(d)(7) of the Act will not be considered as creating a conflict with the Board's Separation of functions rule, § 300.4 of this chapter, in this or any other Board proceeding.

§ 322.9. Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36211 Filed 12-27-78; 8:45 am]

[6320-01-M]

[Regulation PS-81; Amdt. No. 60 of Part 399]

#### PART 399—STATEMENTS OF GENERAL POLICY, FREE AND REDUCED-RATE TRANSPORTATION OF PERSONS

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board, on its own initiative, is revoking its policy that United States air carriers may provide free or reduced-rate transportation of persons overseas or abroad only when such transportation is required in the paramount national interest. Such free or reduced rate transportation will henceforth be allowed to the full extent permitted by statute.

DATES: Adopted: December 21, 1978.  
Effective: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of the General Counsel, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Section 403(b) of the Federal Aviation Act provides that no air carrier shall receive compensation for air transportation different from that specified in its currently effective tariffs, except that a carrier may provide free or reduced-rate categories of persons such as employees, their families, disaster victims, etc. In the case of overseas foreign air transportation, free or reduced-rate transportation may also be accorded to such other persons under such other circumstances as the Board may by regulation prescribe. Part 223 of the Economic Regulations provides that free or reduced-rate



transportation for "such other persons" may be provided only upon specific Board authority granted in response to a carrier's application setting forth the authority desired and the reason therefore.

In PS-10 (24 FR 9619, December 2, 1959), the Board promulgated 14 CFR 399.34 (recodified as section 399.35 by PS-21 (29 FR 1446, January 29, 1964)). That section provided that a request by a United States government agency for free or reduced-rate transportation of persons overseas or abroad on a United States flag air carrier will not be permitted unless it is in the "paramount national interest." However, nothing in Section 403(b) or the Board's regulations requires a carrier's application to be accompanied by a State Department request, and nothing requires the Board to obtain State Department approval for any carrier application. The Board's previous consultations with the State Department and its "paramount national interest" standard were discretionary and were intended to protect the highly regulated, inflexible rate structures which the CAB administered. With the new Airline Deregulation Act of 1978, and the present Board's less restrictive aviation policies, section 399.35 no longer serves a useful purpose, and sometimes prevents carriers from rendering worthwhile public services. Continuing the policy in section 399.35 would only invite strained interpretations of "paramount national interest" and cheapen this important standard.

The ability of carriers to provide free or reduced-rate transportation should be left unrestricted to the full extent permitted by law. Under 14 CFR 223.8, any carrier may apply for special authority to furnish free or reduced-rate foreign or overseas air transportation. The Board will consider each application on a case-by-case basis. The Board has ample power under sections 404(b) and 411 of the Federal Aviation Act to prevent discrimination and unfair competition.

Since section 399.35 is only a general statement of policy, and the change made by this rulemaking relieves a restriction, and imposes no new burden on any person, it is found for good cause that notice and opportunity for public comment are not required, and the change may be effective immediately.

Accordingly, the Board revokes and reserves section 399.35 of the Economic Regulations (14 CFR 399.35), with a corresponding change to the table of contents for 399.

(Sections 102, 204(a) and 403(b) of the Federal Aviation Act of 1958, as amended; — Stat. —, 72 Stat. 743, 758; 49 U.S.C. 1302, 1324, 1373).

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36212 Filed 12-27-78; 8:45 am]

[6355-01-M]

## Title 16—Commercial Practices

### CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

#### PART 1040—INTERIM STATEMENT OF POLICY AND PROCEDURE FOR CLASSIFYING, EVALUATING AND REGULATING CARCINOGENS IN CONSUMER PRODUCTS

##### Clarification of Commission Intent and Reopening of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Clarification of Commission intent and reopening of comment period.

SUMMARY: In this notice, the Commission explains the status and clarifies the intent of its Interim Statement of Policy and Procedure for Classifying, Evaluating and Regulating Carcinogens in Consumer Products. The Commission reopens for 60 days the time for public comment and invites the public to comment on the interim statement, as clarified. The Commission is taking these actions because, as indicated in a recent court decision, it appears there is some public uncertainty regarding the interim statement.

DATES: Comments on the interim statement of policy and procedure are due on or before February 26, 1979.

ADDRESS: Written comments should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. All material relevant to the policy and procedure statement, including comments received, may be seen in, and copies obtained from, the Office of the Secretary, 3d Floor, 1111 18th Street, NW., Washington, D.C. 20207 during business hours Monday thru Friday.

##### FOR FURTHER INFORMATION CONTACT:

David Meinick, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, (202) 634-7770.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 13, 1978 (43 FR 25658), the Commission published an Interim Statement of Policy and Procedure for Classifying, Evaluating and Regulating Carcino-

gens in Consumer Products (43 FR 25658). The interim statement of policy and procedure, among other things, establishes a classification scheme under which the Commission, on the basis of a review of existing data, would provisionally assign substances to one of three categories based on the type and quality of the data available concerning a substance's carcinogenic potential. The Commission would publish the provisional classification in the FEDERAL REGISTER, soliciting public comment on the correctness of the provisional classification and the validity of the underlying scientific principles relevant to the classification. Comment would also be solicited on the manufacture and use of the substance in consumer products, consumer exposure to the substance, and the potential for ingestion, inhalation, or absorption of the substance into the human system. On the basis of the comments received, the Commission would affirm or revise the provisional classification. The classification would determine the priority the Commission would give to further evaluation of the substance. However, the category to which a substance is assigned would have no binding legal effect on the substance or products containing the substance.

The Commission was in the process of considering the first provisional classification of a substance under the interim statement of policy and procedure when a lawsuit, brought by several individual chemical manufacturers and a trade association of chemical manufacturers, was filed in the United States District Court for the Western District of Louisiana (*Dow Chemical, USA, et. al. v. Consumer Product Safety Commission*, Civil Action No. 781166, W.D.La.). The lawsuit raises certain procedural and substantive objections to the interim statement and its implementation through provisional classification. On September 28, 1978, the District Court issued a preliminary injunction prohibiting the Commission from provisionally classifying any substance pursuant to the interim statement of policy and procedure, pending a final decision in the case. The District Court, in its November 1, 1978 opinion setting forth its reasons for issuing the preliminary injunction, found that the Commission violated the Administrative Procedure Act (APA) in issuing the Interim Statement of Policy and Procedure by making it effective on the date of publication without prior notice and an opportunity for comment. The court found that the interim statement is a rule having substantial impact on the plaintiffs. The court found the statement is subject to the rulemaking requirements of the APA, and is not, as

the Commission intended and has argued, a general statement of policy and procedure which would be exempt under the APA from the requirements for notice and public comment. (The court's opinion and other court papers filed by plaintiffs and the Commission in the lawsuit are available for inspection and copying in the Commission's Office of the Secretary at the above address.)

One basis for the court's conclusion concerning the substantial impact of the Commission's interim statement of policy and procedure is the court's belief that interested persons, including the plaintiffs, will not have the right or opportunity to challenge the underlying scientific principles set forth in the statement (e.g. §§ 1040.21 and 1040.22) in subsequent proceedings to classify or regulate a product as a carcinogen. The Court thus viewed the statement of policy and procedure as a conclusive statement of the Commission's views on fundamental questions of scientific and regulatory policy and as an attempt to foreclose consideration of such questions in later individual proceedings. The Commission is issuing this clarification to clearly indicate that its intention in issuing the interim statement of policy and procedure is not to foreclose consideration of any fundamental issues involved in the regulation of potential carcinogens in consumer products, nor to deny to any interested person the right or opportunity to participate in the regulatory process.

The Commission issued the interim statement of policy and procedure in order to inform its staff and the public of the Commission's current views on the way it would approach the regulation of potential carcinogens, including the type of scientific data it would examine in order to determine which substances are carcinogens and the relative weight it would place on various data.

It should be noted that at the time the Commission issued the interim statement of policy and procedure, it specifically considered the option of proposing the statement for adoption as a binding substantive (or legislative) rule. Such a rule, if finally promulgated by the Commission after an opportunity for public comment, would have foreclosed further discussion of the scientific principles and regulatory policy outlined in the statement in subsequent proceedings involving individual substances. However, the Commission decided that it would not attempt to promulgate such a binding rule, but rather would, by means of the interim statement of policy and procedure, announce to the public the general policies which it would seek to establish in subsequent rulemaking proceedings. At the same time, the

Commission sought to inform the public of the internal procedures it would follow on an interim basis in selecting substances as candidates for regulation.

Because of the complexity of the issues raised by its interim statement of policy and procedure, the Commission decided that it would be beneficial to seek public comment on the statement as a whole. This opportunity for comment is in addition to the opportunity for comment provided by the statement on individual classification determinations and the opportunity for oral and written presentations provided by law following proposal and before issuance of any final standard or ban regarding an individual product of substance. The Commission also believed it would obtain useful information on the practicality of its internal procedures, including the additional opportunities for public comment provided by the statement, by beginning the process of classifying and evaluating individual substances while receiving public comment on the statement of policy and procedure. Therefore, the Commission made the statement effective on an interim basis upon publication in the FEDERAL REGISTER on June 13, 1978.

The statement, as explained in § 1040.6(a), sets forth the Commission's procedures for reviewing substances in an orderly way so that the Commission can decide whether it is necessary to regulate consumer products containing the substances. Provisional classification in particular helps the Commission decide which products merit priority for detailed staff evaluation. The procedures provide for public comment on the provisional classification so the Commission can obtain the views of affected industry, scientific experts, and the general public on the potential health risks associated with the substance and the scientific principles underlying the classification determination; as well as information on the manufacture and use of the substance, consumer exposure, and potential ingestion, inhalation, or absorption of the particular substance into the human system. The policy and procedure at § 1040.6(d) and § 1040.33 provide for this public participation and detailed evaluation before the Commission decides whether to begin to regulate a product, because the Commission believed it was important to permit the public to participate in deciding whether it was necessary to begin the lengthy and costly process of setting a safety standard or other regulation or banning a product.

For example, the policy anticipates that following final classification as a Category A substance, the Commission will begin a regulatory action with re-

spect to any consumer product to which such a substance is intentionally added. Section 1040.41 states that "it is reasonable to assume that CPSC will act to ban, or reduce to the lowest level attainable, the intentional addition to a consumer product of a Category A substance." The procedures available to the Commission in regulating any product are summarized in § 1040.4. The Commission also stated in the preamble to the policy (43 FR 25658), "[t]he determination to take regulatory action against particular products or classes of products will continue to be made in individual proceedings, in accordance with the applicable statutory provisions and the terms of this policy statement." The Commission clarifies the statement by emphasizing the following points: (1) That a decision to classify a substance as a "Category A" substance means that the Commission considers such substance to have a higher priority for possible regulatory action than substances not so classified; (2) The assumption that CPSC will "act" with respect to any product means only that the Commission is likely to begin a rulemaking proceeding by publishing a proposed rule in the FEDERAL REGISTER; (3) That the Commission will adhere to all applicable statutory procedures in any proceeding it begins; (4) That the Commission will consider all underlying facts relevant to the statutory findings; and (5) That while the scientific principles enunciated in the policy will likely be referred to in explaining the Commission's findings regarding the degree and nature of the risk of injury associated with a product under consideration for regulation, these principles are in no sense binding on members of the regulated industry, the Commission, or the Commission Staff and will be fully subject to challenge before the Commission, both as to their general validity and their specific application.

In the statement, the Commission recognized that the causes and mechanisms of cancer induction are still at the frontiers of science (§ 1040.4(a)) and that new information may continually be developed as a result of further research. The Commission therefore noted in § 1040.6(g) that it would adjust the policy "to reflect significant new scientific information, legal and policy developments and interagency regulatory initiatives." In addition, § 1040.6(c)(3) provides for periodic Commission review of the decisions to classify specific substances and adjustment of the classifications when necessary.

##### SUMMARY

In summary, the Commission reemphasizes that it will fully analyze all public comments it receives on the



classification criteria and the underlying scientific principles set forth in the interim statement of policy and procedure and will make any necessary changes before it issues a final statement. In addition, when operating under the policy the Commission will publish each classification of a substance as a provisional (or proposed) classification before it issues a final classification. The public will be able to comment on any of the scientific principles upon which the classification is based, both as to their validity and application to the particular substance in question. The Commission will evaluate and address all comments before issuing a final classification. Finally, in any subsequent rule-making proceeding concerning the substance, the public will be able to comment on all information and data on which a proposed regulation is based, including the scientific principles underlying the finding of risk of injury. Again, the Commission will analyze and address all comments before it issues a final regulation. Any final regulation must be supported by substantial evidence on the record. Thus, there will be several stages of any proceeding to regulate a substance as a carcinogen where the principles and assumptions underlying the Commission's decision are subject to the "informed reflection and genuine dialogue" which the District Court in *Dow Chemical, U.S.A. v. CPSC* held is necessary to comply with the APA.

While the Commission is prevented by the preliminary injunction from implementing the Interim Statement of Policy and Procedure through the provisional classification of substances about which a question of safety has been raised, it is continuing to carry out its statutory responsibility to receive and screen information concerning possibly carcinogenic substances, set priorities for the evaluation of consumer products containing such substances, and carry out other internal activities, independent of and separate from the statement of policy and procedure, related to addressing possible hazards associated with carcinogenic substances in consumer products. The Commission also will continue to take regulatory action, on a case-by-case basis, when it determines such action is necessary to protect the public health and safety.

#### REOPENING OF COMMENT PERIOD

The Commission is reopening the comment period on the interim statement for 60 days because it wishes to obtain full public views on the statement as clarified here. The Commission will fully consider all comments it has already received, so commenters need not submit new comments unless they wish to revise their previous

statements. The Commission also welcomes additional public comment. In addition, the Commission intends to hold public meetings in various locations around the United States to obtain public views on the statement of policy and procedure and other issues relevant to the regulation of carcinogens in consumer products. After all views are received and analyzed, the Commission will consider a final statement of policy and procedure for classifying, evaluating and regulating carcinogens in consumer products.

Interested persons should submit comments and any accompanying data or material to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments should be submitted on or before February 26, 1979. Comments received after that date will be considered to the extent practicable. Comments and accompanying data may be seen in, and copies obtained from, the Office of the Secretary, 3rd Floor, 1111 18th Street, N.W., Washington, D.C., during business hours Monday through Friday.

Dated: December 20, 1978.

SADYE E. DUNK,  
Secretary, Consumer Product  
Safety Commission.

[FR Doc. 78-36183 Filed 12-27-78; 8:45 am]

[6740-02-M]

#### Title 18—Conservation of Power and Water Resources

#### CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

#### SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

[Docket No. RM78-23]

#### PART 154—RATE SCHEDULES AND TARIFFS

#### Interstate Pipeline Recovery of State of Louisiana First Use Tax

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interim Rule, request for comments.

SUMMARY: This interim rule amends the procedures, established in Order No. 10 (43 FR 45553, October 3, 1978), for recovery of the Louisiana First Use Tax by interstate natural gas pipelines. The rule sets forth the rate treatment and accounting procedures to be followed until a final and non-appealable court determination of the constitutionality of the Louisiana First Use Tax is made.

DATES: This interim rule is effective as of December 20, 1978. Written com-

ments must be received prior to January 25, 1979.

ADDRESS: Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM78-23.

#### FOR FURTHER INFORMATION CONTACT:

William Topping, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, Phone: 202-275-5619.

On August 28, 1978, the Commission issued Order No. 10<sup>1</sup> which amended 18 CFR 154.38 of its Regulations promulgated pursuant to the Natural Gas Act, by adding a new paragraph (18 CFR 154.38(h)). Paragraph (h) establishes procedures governing pipeline recovery of the State of Louisiana First Use Tax on Natural Gas.<sup>2</sup> This new paragraph provides that no pipeline shall be permitted to reflect in its rates costs associated with the First Use Tax prior to the date such tax is finally determined to be valid and constitutional unless a pipeline can show (a) it has undertaken all legal action available to it to determine the constitutionality of the tax; and (b) it will be able to recover the amounts paid to Louisiana if the tax is later found to be invalid. If the pipeline can demonstrate the foregoing, Order No. 10 permits the pipeline to collect the tax, subject to refund, pursuant to a temporary tracking mechanism similar to a purchased gas adjustment clause. Under Order No. 10, pipelines are only permitted to reflect the First Use Tax pursuant to this temporary tracking mechanism. They are not permitted to reflect the First Use Tax in general section 4<sup>3</sup> rate cases.

Applications for rehearing were filed on September 20, 1978, by Northern Natural Gas Company and on September 27, 1978, by Associated Gas Distributors, Tennessee Gas Pipeline Company, Consolidated Gas Supply Corporation, Bear Creek Storage Company, Stingray Pipeline Company, Trunkline Gas Company and Panhandle Eastern Pipe Line Company, Columbia Gas Transmission Corporation, United Gas Pipe Line Company, Southern Natural Gas Company, Texas Eastern Transmission Corporation, El Paso Natural Gas Company, Interstate Natural Gas Association of America, and Texas Gas Transmission

<sup>1</sup> 43 FR 45553 (October 3, 1978) (As corrected by Errata Notice of September 15, 1978).

<sup>2</sup> 1978 La. Sess. Law Serv. 482 (Act No. 294), to be codified as La. Rev. Stat. § 47:1301-47:1307. Hereinafter referred to as "First Use Tax."

<sup>3</sup> 15 U.S.C. 717c.

Corporation. On October 2, 1978, the Attorney General of the State of Louisiana filed a letter of comment; on October 3, 1978, the American Gas Association filed an Amicus Brief; and on October 6, 1978, the Interstate Natural Gas Association of America filed a request for oral argument.

On October 20, 1978, the Commission granted the applications for rehearing of Order No. 10 for the purpose of further consideration. The applications for rehearing raise the following issues:

(i) Whether the First Use Tax is entitled to a presumption of constitutionality until judicially determined invalid.

(ii) Whether the First Use Tax is a recoverable cost of providing service.

(iii) Whether in order to recover the First Use Tax from pipeline customers, pipelines should be required to comply only with Louisiana statutes which provide a mechanism for refunding taxes paid under protest if the tax is found invalid (La. Rev. Stat. § 47:1576).

(iv) Whether Order No. 10 incorrectly or inadequately dealt with several costs associated with the First Use Tax including interest, carrying charges, surcharges, and any court ordered bond payment.

(v) Whether prohibiting recovery of the First Use Tax through a general section 4 rate filing is unlawful and outside the authority of the Commission under the Natural Gas Act.

(vi) Whether Order No. 10 and the regulation promulgated therein violate the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and the right to due process of law.

Before responding to the specific issues raised in the applications for rehearing, some general comments are in order. The Commission recognizes the interest and concern which have been raised by the numerous applications for rehearing of Order No. 10. In response to the issues raised by the numerous applications for rehearing, the Commission is modifying Order No. 10 and amending § 154.38. In addition, we shall provide an opportunity for comment as described below.

The Commission is making this amendment effective upon the date of issuance of this order because good cause exists to proceed without compliance with the notice, public procedure, and effective date provisions of 5 U.S.C. 553. Under Order No. 10, which is presently still in effect, pipelines are prohibited from reflecting the First Use Tax in general section 4 rate cases. The Commission is concerned that a delay in the effective date of this amendment until after public comment would trigger a flood of section 4 rate filings to reflect the First Use Tax during the comment period.

Allowing pipelines to reflect the First Use Tax in their general section 4 rate cases would result in needless administrative burdens and costs, and would inadequately protect the public interest.<sup>4</sup> Therefore, the Commission finds that prior notice and public procedure would be impracticable, unnecessary, and contrary to the public interest.<sup>5</sup> Although the amendment is being made effective immediately, interested persons are invited to submit written comments, data, views or arguments with respect to the amendment.<sup>6</sup>

#### I. PRESUMPTION OF CONSTITUTIONALITY

Several applicants argued that the Commission and the pipelines are bound by the provisions of the First Use Tax until the Courts declare otherwise.<sup>7</sup> Order No. 10 does not violate this principle of law.<sup>8</sup> Order No. 10 does not advocate that pipelines should violate any provisions of the First Use Tax, nor does it make a determination as to its constitutionality. Rather Order No. 10 establishes procedures by which pipelines can recover the costs attributable to the First Use Tax. These procedures do not deny or

<sup>4</sup> See Section V, *infra*, for a complete discussion of the disallowance of section 4 rate increases.

<sup>5</sup> See Section VI, *infra*, for a complete discussion of "good cause."

<sup>6</sup> See Section IX, *infra*.

<sup>7</sup> Applicants cited the following cases in support of their contention that an act is presumed constitutional until judicially determined invalid: *U.S. v. Carolene Products Co.*, 304 U.S. 144 (1938); *Williams v. General Foods Corp.*, 492 F.2d 399, 408 (7th Cir. 1974); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *McDonald v. Board of Election*, 394 U.S. 802, 808 (1969); *Wiley v. Memphis Police Department*, 548 F.2d 1247, 1251 (6th Cir. 1977); *Carey v. Greyhound Bus Co.*, 500 F.2d 1372, 1379 (5th Cir. 1974).

<sup>8</sup> The Commission has instituted an action challenging the validity of the First Use Tax in the Middle District of Louisiana. *Federal Energy Regulatory Commission v. Shirley McNamara, et al.*, Civil Action No. 78-384 (M.D. La. filed September 29, 1978). Specifically, the Commission asserted that the First Use Tax is null, void, of no effect, and unenforceable because it contravenes and violates Article I, Section 8, Clause 3 ("Commerce Clause"), Article I, Section 10, Clause 1 ("Impairment of the Obligation of Contract Clause") and Clause 2 ("Import-Export Clause"), and Article VI, Clause 2 ("Supremacy Clause") of the Constitution of the United States, and Section 20 of the Natural Gas Act (15 U.S.C. 717a), and, as a result, implicates, infringes upon, and conflicts with, the Commission's authority under the Natural Gas Act (15 U.S.C. 717, *et seq.*).

Although the Commission doubts the validity of the First Use Tax statute, it is not attempting to determine the constitutionality of that statute in this docket. We have, instead, provided the procedures prescribed herein to permit recovery of the First Use Tax pending a determination of its validity and to assure prompt refunds if the First Use Tax is found to be unconstitutional.

relieve pipelines from their duty to comply with the First Use Tax until a final determination of validity is made.

#### II. RECOVERABLE COST OF PROVIDING SERVICE

Relying on the ratemaking principle that a utility is entitled to recover its reasonably and prudently incurred costs of providing service<sup>9</sup> and relying on several court cases and Federal Power Commission opinions<sup>10</sup> which have held that taxes are properly incurred costs, applicants<sup>11</sup> argued that the First Use Tax is a recoverable cost of providing service.

Whether taxes are always recoverable costs<sup>12</sup> or whether the First Use Tax is a recoverable cost are not issues in this proceeding. Order No. 10 does not deny the pipeline the right to recover the First Use Tax, but rather restricts the manner by which the pipelines can recover the tax from their customers. Instead of allowing recovery through a general section 4 rate increase, recovery is allowed pursuant to a temporary tracking provision similar to a purchased gas adjustment clause. In addition, an escrow account has been established to protect customers' funds until final determination of the constitutionality of the tax is made. These procedures are necessary to insure just and reasonable rates and to protect consumers from being charged with any unnecessary or illegal costs.

It should be noted that there may be one situation in which pipelines might absorb the loss of tax payments made to Louisiana. If the First Use Tax is determined invalid or unconstitutional by a final and non-appealable court

<sup>9</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *West Ohio Gas Co. v. Public Utilities Commission (No. 1)*, 294 U.S. 63 (1934); *FPC v. Memphis Light Gas and Water Div.*, 411 U.S. 458, 466-7 (1973); *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 243 (1967).  
<sup>10</sup> *Mississippi River Fuel Corp. v. FPC*, 163 F.2d 433, 437 (D.C. Cir. 1947); *Galveston Electric Co. v. Galveston*, 258 U.S. 388 (1922); *Midwestern Gas Transmission Company, et al.*, 36 F.P.C. 61, 71-2 (1966); *Wisconsin Michigan Power Company*, 31 F.P.C. 1445, 1500 (1964).

<sup>11</sup> The Associated Gas Distributors application disagreed with this proposition and argued that pipelines should establish, in accordance with their ordinary burden of proof, that the First Use Tax has increased their total cost of service to an extent which denies them a reasonable rate of return.

<sup>12</sup> Although we have generally permitted valid taxes to be a recoverable cost of providing service, we are not bound in determining rates to the use of "any single formula or combination of formulas." See *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942). Any costs, including valid taxes, can be denied rate recovery if the total effect of the natural gas rates are never the less "just and reasonable." See *FPC v. Hope Natural Gas Co.* 320 U.S. 591, 603 (1944).



order, and should Louisiana decide not to return all funds collected, then the pipelines will have to absorb the loss of those funds not returned. The Commission has a duty to allow only such rates as will prevent consumers from being charged with any unnecessary or illegal costs. *NAACP v. FPC*, 425 U.S. 662, 666 (1976). Therefore, if the first Use Tax is found unconstitutional, the pipeline customers should receive refunds plus interest on the total amount that pipelines collected from them, even if the State of Louisiana does not refund all of the revenues it collects. The Commission finds no reasonable basis for concluding and providing that the ratepayers, rather than the stockholders of the pipelines should bear the cost of a tax which is ultimately found to be unconstitutional. *El Paso Natural Gas Co.*, 13 F.P.C. 421,436 (1954); see also, *Tennessee Natural Gas Line, Inc. v. FPC*, 221 F.2d 531 (D.C. Cir. 1954); *City of Cleveland, Ohio v. FPC*, 525 F. 2d 845, 850 (D.C. Cir. 1976); and *Panhandle Eastern Pipe Line Co.*, 13 F.P.C. 53, 103 (1954).

### III. PROCEDURAL REQUIREMENTS FOR PIPELINE RECOVERY OF THE FIRST USE TAX

#### A. COMPLIANCE WITH LA. REV. STAT. § 47:1576 IS INADEQUATE

In Order No. 10, the Commission stated its concern "that there may not be an adequate remedy in Louisiana state law to permit pipelines to recover amounts paid (even under protest) in the event the tax is collected during the period of litigation and is later found to be unconstitutional." This concern prompted the Commission to require a pipeline, in order to collect the tax subject to refund, to demonstrate that "it will be able to recover the tax paid by [it] to the State of Louisiana in the event the tax is declared invalid by a final, nonappealable court order." This concern also prompted the Commission to require all funds collected during the pendency of litigation to be placed in escrow.

Many of the applicants argued that these requirements are not necessary because present Louisiana law permits pipelines to recover all funds paid under the First Use Tax if the taxes are paid under protest. They cite Section 3, Article VII of the Louisiana Constitution of 1934 which provides:

The legislature shall prohibit issuance of process to restrain the collection of any tax. It shall provide a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

They further argue that La. Rev. Stat. § 47:1576 provides a refund. La. Rev. Stat. § 47:1576 provides that, upon notice of the taxpayer's intention to file suit for the recovery of the

amounts paid under protest, the amount remitted shall be placed in an escrow account and held by the collector or his duly authorized representative for a period of thirty days. If suit is filed within the thirty-day period for recovery of the amount, the funds in the escrow account will continue to be held pending the outcome of the suit. If the taxpayer prevails, the collector is required to refund the amount to the claimant, with interest at the rate of six percent (6%) per annum covering the period from the date the funds were received by the collector to the date of refund.

The application of Tennessee Gas Pipeline Company (Tennessee) disputes the contention by many of the other applicants that present Louisiana law guarantees the protesting taxpayer his refund if he wins his claim that the tax is illegal. Tennessee states that, as part of the First Use Tax package, the Louisiana legislature amended Title 47 to add section 1351. Section 1351, which creates the First Use Tax Trust Fund to hold the proceeds from the tax, apparently conflicts with La. Rev. Stat. § 47:1576.

Tennessee believes that the more specific escrow and refund provisions of La. Rev. Stat. § 47:1351(D) may effectively repeal section 1576 insofar as section 1576 would otherwise apply to the escrow and refund of the First Use Tax. If section 1576 is unavailable, pipelines will have to rely upon section 1351(D). Section 1351(D) provides, in pertinent part, that the First Use Tax proceeds will be deposited in a trust fund and will be considered to be in escrow until the State Treasurer, with the concurrence of two-thirds of the State Bond Commission, determines that the funds are available for the uses enumerated in the statute. Thus, the disbursement of the trust fund is within the discretion of the State Treasurer and two-thirds of the Bond Commission. While the remainder of Section 1351(D) indicates that the taxes will be refunded if the tax is finally held invalid, there is no assurance that the funds remaining in the escrow fund will be adequate to refund the total First Use Tax paid. There is no assurance that some portion of the trust fund will not have already been spent. The Commission agrees with Tennessee's conclusion that present Louisiana law may not permit pipelines to recover all protested amounts paid. The Commission therefore finds that compliance with La. Rev. Stat. § 47:1576 is inadequate as a customer safeguard, and that some additional procedures are necessary for protecting pipeline customer's funds. Accordingly, we have provided an escrow account to protect customer funds.

#### B. AN ESCROW ACCOUNT PROTECTS CUSTOMER FUNDS

The Commission believes that an escrow account is the most efficient method of protecting consumers. The Commission has a duty to protect any payments made by pipeline customers until final determination of the constitutionality of the First Use Tax. Moreover, the United States Court of Appeals for the District of Columbia has found that protection under similar circumstances is appropriate. In *Tennessee Natural Gas Lines, Inc. v. Federal Power Commission*,<sup>12</sup> Tennessee Natural Gas contested a Federal Power Commission Order<sup>13</sup> which disallowed a Tennessee Gross Receipts Tax as a proper item of cost of service. At the time of the petition for review of the Commission's order a suit was pending in the Tennessee courts contesting Tennessee Natural Gas's liability for the tax. The Commission's position was that if the courts finally determined that the company was liable for the tax, the inclusion of the amounts as a cost of service would be allowed. The U.S. Court of Appeals for the District of Columbia held:

"In this posture of the case the ends of justice will best be served by a remand of the matter to the Commission, with directions that final determination of the rates be postponed until the termination of the Tennessee litigation and that its order disallowing the item be temporarily suspended. In the meantime the funds resulting from the payment of the higher rates should be protected, so that they can be refunded to the company's sole customers in these sales if the ultimate result be to that effect." (emphasis added)

Order No. 10 imposes procedures which implement the aforementioned principles. The Order does not disallow the First Use Tax as a proper item of cost of service, but allows recovery of the tax if certain conditions are met. Order No. 10 creates a separate PGA-type tracking account so that final determination of the rates can be postponed until the issues in litigation are resolved. Since funds paid to the First Use Tax Trust Fund may not be recoverable the Commission has the responsibility of protecting consumers, and has done so through the establishment of an escrow account pursuant to 18 CFR 250.12. Without an escrow account there would be no assurance that the customers would have their funds returned if the First Use Tax is found invalid.

In addition to the escrow requirement of Order No. 10, the amendment herein requires pipelines to comply with La. Rev. Stat. § 47:1576 before they can recover the costs of the First Use Tax from their customers. Al-

<sup>12</sup> 221 F.2d 531 (D.C. Cir. 1954).

<sup>13</sup> 13 F.P.C. 963 (1954).

<sup>14</sup> 221 F.2d 531, 532 (D.C. Cir. 1954).

though compliance with La. Rev. Stat. § 47:1576 by the pipelines is not necessary to protect the escrowed customer funds, use of the mechanism would prevent an imprudent and automatic loss of funds by the pipeline to the State of Louisiana. Therefore, the amendment adopted in this order retains the escrow requirement of Order No. 10 and modifies Order No. 10 to require pipelines to comply with La. Rev. Stat. § 47:1576.

#### C. THE AMENDMENT ADOPTED HEREIN DELETES ORDER NO. 10 PREREQUISITE REQUIREMENTS FOR TRACKING THE FIRST USE TAX

Applicants were generally concerned with the prerequisite requirements for tracking the First Use Tax. Order No. 10 permits the collection of the tax subject to refund if the pipeline can show (a) it has undertaken all legal action available to it to determine the constitutionality of the tax, and (b) it will be able to recover the tax paid by it to the State of Louisiana in the event the tax is declared invalid by a final, nonappealable court order. Both of these requirements have been criticized as conditions which would be difficult to prove. These requirements were established in order to protect the public from possible loss of funds collected. Nevertheless, these requirements are deleted from the amendment adopted herein since the Commission finds that the establishment of an escrow account pursuant to 18 CFR 250.12 and compliance with La. Rev. Stat. § 47:1576 sufficiently protect the public from any unjust or unreasonable charge.

#### D. COURT ENJOINING OF COLLECTION OF THE FIRST USE TAX

In Order No. 10 the Commission stated that if collection of the tax were enjoined by the courts during the period of litigation, no collection of such amounts by pipelines in their jurisdictional rates would be permitted until such time as the tax was found to be lawful by a final and nonappealable court order. We also stated that, in the event collection of the tax was enjoined, the pipelines should keep account of their contingent tax liability during the pendency of court review and appropriate rate relief would be granted by the Commission if the tax was ultimately held to be valid and constitutional. The amendment adopted herein retains these provisions.

One applicant<sup>15</sup> requested that pipelines be allowed to track the cost of any bond which might have to be posted in order for the court to issue an injunction. The Commission postpones determination of this issue until such time as a court takes such action.

<sup>15</sup> Southern Natural Gas Company, application at p. 4.

At that time we could make our decision in light of the actual details of the court opinion.

#### E. TRACKING PROVISIONS AND TERMINATION OF TRACKING PROVISIONS

Applicants generally requested that the tracking provisions be more explicitly defined. The Interstate Natural Gas Association of America recommended that the Commission allow the filing of applications by pipelines on or before March 1, 1979 for a temporary tracking procedure to become effective April 1, 1979 (the date the tax takes effect). In order to insure that pipelines would comply with the requirements of La. Rev. Stat. § 47:1576, the Interstate Natural Gas Association of America recommended that the applications should be accompanied by an affidavit signed by an authorized representative of the applicant stating that the applicant will comply with the procedures set out in La. Rev. Stat. § 47:1576. In order to insure that pipelines did eventually comply with the statutory protest procedures, the Interstate Natural Gas Association of America recommended that the order approving the application could be conditioned upon the applicant pipeline forwarding to the Commission written evidence that this procedure had been completed.<sup>16</sup> The Commission accepts this recommendation and has incorporated it into the amendment adopted herein.

The Commission also adopts the following provisions for the tracking of the First Use Tax. Should the tax be required to be paid by the pipelines during the pendency of the litigation and should the pipeline comply with the provisions of La. Rev. Stat. § 47:1576, the Commission will waive the filing requirements of § 154.63 of the regulations (18 CFR 154.63) as well as the provisions of § 154.38(d)(3) of the regulations (18 CFR 154.38) in order to permit pipelines to make an adjustment to their rates to be filed on or before March 1, 1979, effective April 1, 1979, subject to refund, to reflect collection of the tax in their rates. The initial amount to be paid by the pipeline from April 1 through the date of its first adjustment date under the temporary tracking provision shall

<sup>16</sup> A suit for recover of the First Use Tax cannot be filed until the First Use Tax is paid under protest. La. Rev. Stat. § 47:1576. Liability for the First Use Tax will not begin to accrue until April 1, 1979. The above procedure allows the First Use Tax tracker to be in effect on the date the tax liability begins to accrue and allows the pipelines to collect the tax currently from their customers, thereby avoiding the two months of deferral of the tax that otherwise would result if the Commission required that the pipelines wait until the suit for recovery has been filed before applying for authority to track the tax.

be based upon volumes estimated to be subject to the First Use Tax during that period. The initial rate adjustment shall be calculated on the estimated total system sales for that same period. Coincident with filing the initial rate adjustments, pipelines shall file temporary tracking provisions to provide for semi-annual<sup>17</sup> rate adjustments to coincide with their semi-annual PGAC adjustments.<sup>18</sup> These provisions shall be separate from, but structured like, the respective pipeline's PGA clause, except as otherwise provided in this order. The tracking provisions shall include deferred accounting provisions through use of Account 186, Miscellaneous Deferred Debits, but no carrying charges will be permitted on balances accrued in the deferred account. The deferred account protects the pipeline from permanent under-collections of the tax during the early period the tax is in effect, if the pipelines err in determining which volumes of gas are subject to the tax. The deferred account and the tracking provisions also limit disputes as to amounts to be refunded by pipelines should the tax ultimately be found to be invalid by the courts.

Pipelines which have elected to recover changes in purchased gas costs through general section 4 rate cases under the provisions of Order No. 16 issued November 27, 1978, in Docket No. RM79-1, may also establish a tracking provision patterned after a PGA clause with any two semi-annual adjustment dates which are six months apart.

Should a pipeline not be required to pay the First Use Tax during the pendency of litigation of the constitutionality of the tax, and should the tax be found to be invalid by a final and non-appealable court order, the Commission shall by further order, establish a surcharge, of a reasonable duration, to reimburse pipelines for payments due on the First Use Tax.

Should the tax be paid under protest in accordance with La. Rev. Stat. § 47:1576 and later found to be valid by a final and non-appealable court order, the Commission shall, by further order, terminate the temporary First Use Tax tracking provisions and terminate the escrow account and provide for a final surcharge to clear the balance in the deferred account. At that time, the pipelines would have had an opportunity to become familiar with the tax so that they could determine which volumes of gas were affected by it. Thus, the tax would thereafter be recovered as are most items of cost, i.e., through general section 4 rate filings.

<sup>17</sup> Those pipelines with annual PGA rate adjustment provisions could, of course, limit such filings to once a year.

<sup>18</sup> See Order No. 13-A, issued November 27, 1978 in Docket No. R-406.



Should the First Use Tax be paid under protest in accordance with La. Rev. Stat. § 47:1576 and later found to be invalid, in whole or in part, by a final and non-appealable court order, the Commission shall, by further order, terminate the temporary Louisiana First Use Tax tracking provisions and terminate the escrow account and provide for an immediate refund with interest to the pipeline customers of the funds collected under the invalid statute and placed in the escrow account. The pipelines would, of course, at that time seek recovery of the taxes paid from the State of Louisiana.

#### IV. COSTS ASSOCIATED WITH THE FIRST USE TAX: INTEREST AND CARRYING CHARGES

Several applicants requested that ratepayer funds accumulated in the escrow account should be allowed only 6% interest per year while the validity and constitutionality of the First Use Tax is contested. This 6% interest rate is based on the amount of interest refunded by the State of Louisiana under La. Rev. Stat. § 47:1576 if the First Use Tax is found invalid. A six percent interest rate would be inadequate because the pipeline escrow account, and not the State of Louisiana, will be earning interest on the funds collected. Therefore, should a final and non-appealable Court order find the tax to be invalid, in whole or in part, the Commission shall terminate the tracking provisions and escrow account and provide for an immediate refund of those payments made on that portion of the First Use Tax found invalid, plus the corresponding amounts earned by the pipeline on those payments held in escrow.

Many applicants contended that they would have to borrow money in order to pay the tax if their customers' payments of the tax were held in escrow. If the tax is found invalid, by a final and non-appealable court order, the pipelines will receive and retain the interest refunded by the State of Louisiana. The interest refunded by the State of Louisiana will offset costs of borrowing money. If the tax is found valid, by a final and non-appealable court order, the pipelines will be able to receive and retain the funds in the escrow account plus the earnings on those funds. In this manner, the First Use Tax payments by the pipelines to the State of Louisiana and the costs of borrowing those funds will be offset by the funds in the escrow account plus the earnings on those funds.

#### V. DENIAL OF SECTION 4 RATE INCREASES

Most applicants argued that pipelines have a right to file a section 4 rate increase, recovering prudently incurred First Use Tax payments as a

part of their cost of service. They contended that disallowance of such payments is arbitrary and capricious, unlawful and outside the authority of the Commission under the Natural Gas Act. The Associated Gas Distributors (AGD) objected to the prohibition against recovery of the First Use Tax in general section 4 rate cases on different grounds. AGD argued that the special tracking procedures established by Order No. 10 failed to adequately protect the gas consumer against excessive charges because the special tracking procedures exempted pipelines from their ordinary burden of showing that the First Use Tax has increased their total cost of service to an extent which denies them a reasonable rate of return.

The Commission finds that the procedures adopted in Order No. 10, as amended by this order, effectively balance the pipelines' need to recover the First Use Tax and the gas consumers' need to be protected against excessive charges. With regard to the pipelines' arguments, it must be reiterated that Order No. 10 does not disallow recovery of the First Use Tax, but only establishes the procedures by which the tax can be recovered. In creating a distinct mechanism for recovery (PGA-type tracking mechanism) and not allowing recovery through a section 4 rate increase, the Commission was within its authority under the Natural Gas Act, and has provided an alternate recovery mechanism thereby satisfying any "due process" requirements. The Commission may under sections 5 and 16 of the Natural Gas Act restrict filings under section 4(d).<sup>22</sup> Section 5 authorizes the Commission to determine the just and reasonable rate "to be thereafter observed and in force." Section 16 gives the Commission power to make such orders "as it may find necessary or appropriate to carry out the provisions of this act." Denying section 4 recovery of the First Use Tax was and is necessary and appropriate.

The main purpose of establishing the special tracking procedures set forth in this order is to protect consumer from excessive and inappropriate charges. Second, the order prevents the filing of several general section 4 rate cases to recover these charges. The mechanism adopted in this order both protects the consumer and provides an administratively convenient method of handling this complex issue.

The Commission has reasonably exercised its powers under the Natural Gas Act because the procedures established by Order No. 10, as modified by this order, simplify the administrative

<sup>22</sup>See *Permian Basin Area Rate Cases*, 390 U.S. 747, 777 (1968); *United Gas v. Callery Properties*, 382 U.S. 223, 232 (1965).

procedures, insure pipeline of adequate recovery of the First Use Tax, and insure expeditious refund of all funds paid by pipeline customers if the First Use Tax is found invalid.

#### VI. COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE ACT

Several applicants contend that the Commission failed to comply with the mandatory rulemaking procedures of the Administrative Procedure Act<sup>23</sup> which requires that the agency provide notice of a proposed rulemaking,<sup>24</sup> and an opportunity for public participation or comment.<sup>25</sup> Although the Commission waived the procedural rulemaking steps upon a finding of good cause,<sup>26</sup> applicants contend that good cause did not exist and, if it did exist, the Commission failed to substantiate good cause.

The Administrative Procedure Act recognizes two exceptions to the requirement of notice and public participation: One is for general statements of policy; the other is for a finding of good cause that the procedure is impracticable, unnecessary, or contrary to the public interest. The Commission invoked the latter exception.

Order No. 10 explained that it was in the public interest for Commission to issue Order No. 10 without notice and comment.

First, Order No. 10 determined that special procedures for recovery of the First Use Tax are appropriate:

Therefore the Commission has determined that certain procedures should be established for recovery of this tax by interstate natural gas pipelines. It is particularly appropriate to establish such procedures in light of the fact that this Commission on August 16, 1978, directed the Commission's Solicitor to challenge the constitutionality of the tax in Federal District Court and to seek to enjoin collection of the tax by Louisiana pending completion of judicial review.<sup>27</sup>

The Commission believed it was in the public interest to establish special procedures for pipeline recovery of a tax which was of questionable constitutional validity. It was also imperative to put pipelines on notice that the Commission would allow recovery of the First Use Tax only under those procedures.

Second, Order No. 10 explained the need to establish special procedures to protect pipeline customers and ultimately the public at large:

<sup>23</sup>5 U.S.C. 551, *et seq.*  
<sup>24</sup>5 U.S.C. 553(b).  
<sup>25</sup>5 U.S.C. 553(d).  
<sup>26</sup>5 U.S.C. 553(b) (B) provides: [W]hen the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

<sup>27</sup>Order No. 10, mimeo at 1.

The Commission is concerned that there may not be an adequate remedy in Louisiana state law to permit pipelines to recover amounts paid (even under protest) in the event the tax is collected during the period of litigation and is later found to be unconstitutional.<sup>28</sup>

The Commission had to develop procedures to protect the public from loss of funds if the tax was found invalid and no adequate remedy existed in Louisiana state law. The Commission could not permit consumers to go unprotected. As we explained in Order No. 10:

It is important that this order be issued without notice and public comment procedures to put pipelines on notice that they will not be permitted to reflect the Louisiana First Use Tax in general Section 4 rate cases (which usually involve a 30 day notice period plus a five month suspension by the Commission) in order to collect the Louisiana First Use Tax. If pipelines were planning to file general rate cases to collect the tax, they would have to commence preparation of such cases immediately in order to make the rates effective by April 1, 1979, which is the proposed effective date of the tax.<sup>29</sup>

In order to collect the tax pipelines would have been immediately filing section 4 rate increases. The Commission was concerned that a delay in the effective date of Order No. 10 until after public comment would trigger a flood of section 4 rate filings during the comment period. The Commission feared that such a result would defeat the Commission's purpose of protecting consumers from the economic burden of rate collections in excess of the just and reasonable rate, and therefore proscribed the use of section 4 procedures.

For the aforementioned reasons, good cause also exists to issue the amendment in this order without prior notice and to waive publication of the rule, and to make the rule effective immediately.

#### VII. SUMMARY

For the reasons stated above, the applications for rehearing are denied except as provided in this order. Since the Commission is allowing a public comment period on the amendment in this order and since this order responds to the issues raised in the applications for rehearing, the Commission denies the request by the Interstate Natural Gas Association of America for oral argument.

#### VIII. FINDINGS

(A) The Commission's prior order, Order No. 10, should be clarified and modified consistent with this order.

(B) For the reasons discussed in Order No. 10 and reiterated in the

<sup>28</sup>Order No. 10, mimeo at 2.

<sup>29</sup>Order No. 10, mimeo at 2.

body of this order good cause exists to issue this rule without prior notice to become effective immediately.

(C) Good cause exists, and it is appropriate and in the public interest in the administration of the Natural Gas Act, to waive §§ 154.63 and 154.38(d)(3) of the Regulations to permit special rate filings to reflect the Louisiana First Use Tax, as set forth more fully in the body of this order.

(D) Oral argument would not be of benefit to the Commission in its determination of this rule.

(Natural Gas Act (15 U.S.C. 717 c, f, o); Administrative Procedure Act (5 U.S.C. 553); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); and E.O. 12009, 42 FR 48267)

#### IX. COMMENT PROCEDURES

Although the amendment is made effective immediately, interested persons are invited to submit written comments, data, views or arguments with respect to it. An original and 14 copies should be filed with the Secretary of the Commission. The Commission shall consider all comments received prior to January 25, 1979, and shall determine whether any further modification to the rule adopted in this order should be made. Such modification would become effective from the date of issuance of any order further amending the rule adopted in this order. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should reference Docket No. RM78-23.

In consideration of the foregoing, the Commission hereby orders that:

(A) Except as provided in this order, the applications for rehearing filed by all parties in this proceeding are denied;

(B) The request for oral argument by the Interstate Natural Gas Association of America is denied;

(C) The Commission's Order No. 10 is clarified and modified consistent with this order; and

(D) Part 154, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below, to become effective immediately.

By the Commission.

KENNETH F. PLUMB,  
Secretary.

1. Section 154.38 is amended by revising paragraph (h) to read as follows:

§ 154.38 Composition of rate schedule.

(h) *Pipeline recovery of the State of Louisiana First Use Tax.* (1) Except as provided in subparagraphs (2) and (3) of this paragraph, no pipeline shall be permitted to reflect the costs attributable to the Louisiana First Use Tax in general section 4 rate applications prior to the date the tax is determined to be valid and constitutional by a final and nonappealable court order.

(2) Should a pipeline be required to pay the Louisiana First Use Tax during the pendency of litigation of the constitutionality of the tax, the pipeline will be permitted to collect the tax subject to refund if on or before March 1, 1979, it submits an application for tracking which is accompanied by an affidavit signed by an authorized representative stating that the applicant will undertake the procedures set out in La. Rev. Stat. § 47:1576. Upon completion of this requirement the Commission shall waive the filing requirements of § 154.63 and the provision of § 154.38(d)(3) of its regulations in order to permit the pipeline to reflect the tax in its rate by adjusting its rates, to become effective April 1, 1979, subject to refund, to reflect the estimated effect of the Louisiana First Use Tax. The initial amount to be paid by the pipeline from April 1 through the date of its first adjustment date under the temporary tracking provision shall be based upon volumes estimated to be subject to the Louisiana First Use Tax during that period. The initial rate adjustment shall be calculated on the estimated total system sales for that same period. In order to continue to collect the tax subject to refund, pipelines must, on or before May 30, 1979, submit such evidence as the Commission shall require in order to determine whether the procedures set out in La. Rev. Stat. § 47:1576 have been complied with. Coincident with filing the initial rate adjustment, pipelines shall file temporary tracking provisions to provide for semi-annual rate adjustments to coincide with their semi-annual PGAC adjustments. The tracking provisions shall include deferred accounting provisions through use of Account 186, Miscellaneous Deferred Debits, but no carrying charges will be permitted on balances accrued in the deferred account. Pipelines which have elected to recover changes in purchased gas costs through general section 4 rate cases pursuant to § 154.38(d)(4)(ix) may establish a tracking provision, which generally follows the PGA regulation, with any two semi-annual adjustment dates which are six months apart.

(3) All funds collected under this paragraph will be held in escrow pur-



uant to §250.12, and subject to refund during the pendency of litigation.

(4) Should a final and non-appealable court order find the tax to be valid, the Commission shall by order terminate the temporary Louisiana First Use Tax tracking provisions, terminate the escrow account, and provide for a final surcharge to clear the balance in the deferred account. The tax would thereafter be recovered through general section 4 rate filings.

(5) Should a final and non-appealable court order find the tax to be invalid, in whole or in part, the Commission shall terminate the tracking provisions and escrow account and provide for an immediate refund of those payments made on that portion of the tax found to be invalid plus the corresponding proceeds, including interest earned by the pipeline on the payments held in escrow.

[FR Doc. 78-36116 Filed 12-27-78; 8:45 am]

#### [4210-01-M]

##### Title 24—Housing and Urban Development

#### CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

##### SUBCHAPTER B—SPECIAL ASSISTANCE FUNCTIONS

[Docket No. R-78-602]

##### PART 340—PURCHASE REQUIREMENTS

##### Amendments To Increase Maximum Mortgage Amount Limitations for Purchase of Mortgages Under the Special Assistance Functions

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final Rule.

SUMMARY: Section 318(a) of the Housing and Community Development Amendments of 1978 increased the maximum mortgage amount limitations applicable to the purchase of mortgages under the Special Assistance Functions. This rule amends the regulations to incorporate the new limits.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Susan Kelsey, Government National Mortgage Assoc., 451 Seventh Street, SW., Room 6204, Washington, D.C. 20410, Telephone Number: (202) 755-5593.

**SUPPLEMENTARY INFORMATION:** Under the present rule, GNMA is limited to purchasing mortgages, in amounts which do not exceed \$33,000 for each dwelling unit, plus an additional \$2,500 for each dwelling unit having four or more bedrooms. The dollar limitation is applicable to single-family as well as multifamily dwelling units (24 CFR 340.15(a)). Pursuant to statutory authority, GNMA was able to increase the \$33,000 maximum purchase amount limitation to \$38,000 in all geographic areas where GNMA does business, based on a finding by the Secretary that all areas of the country in which GNMA did business were high cost areas (24 CFR 340.15(b)).

The 95th Congress amended the statutory maximum mortgage purchase amount limitation in two ways: by establishing specific dollar limitations for one- to four-family residences and by increasing the dollar limitations for structures containing more than four units. Thus, GNMA may now purchase mortgages under its Special Assistance Functions on single-family properties of up to \$55,000; on two- or three-family residences of up to \$60,000; and on four-family residences of up to \$68,750. In the case of properties containing more than four dwelling units, GNMA may now purchase the mortgage if the total mortgage amount does not exceed \$38,000 per dwelling unit (or up to \$45,000 per dwelling unit if the Secretary of HUD finds that cost levels in the geographic area require the higher limits) for that part of the property which is attributable to dwelling use.

Accordingly, the regulations pertaining to GNMA's purchase of mortgages under its Special Assistance Functions are being revised to incorporate the one- to four-family limitations and the \$38,000 per unit base limitation for multifamily residences. In addition, the \$45,000 per unit high cost area limitation is being implemented for all areas in which GNMA does business.

The Department of Housing and Urban Development has determined that an environmental impact statement is not required with respect to this rule. A copy of the finding of inapplicability is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

As this regulation increases the original principal obligation of mortgages purchased by GNMA under its Special Assistance Functions, it is in the public interest not to delay the effective implementation of the statutory increase. A delay in implementing the maximum mortgage amounts ap-

proved by Congress would, in fact, be contrary to the public interest. Accordingly, the Secretary has determined that notice and public comment with respect to this regulation are contrary to the public interest, and that good cause exists for making this regulation effective December 28, 1978.

Accordingly, the Government National Mortgage Association amends Chapter III of Title 24 of the Code of Federal Regulations by amending §340.15(a) and (b) as follows:

##### §340.15 Statutory maximum mortgage amounts.

(a) Generally, the original principal obligation of mortgages purchased under the Special Assistance Functions must not exceed \$55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or \$60,000 in the case of a two- or three-family residence; or \$68,750 in the case of a four-family residence; or, in the case of a property containing more than four dwelling units \$38,000 per dwelling unit for that part of the property attributable to dwelling use. These limits do not apply to mortgages covering property located in Alaska, Guam, or Hawaii; to mortgages insured under section 220 or title VIII of the National Housing Act; to mortgages insured under section 213 of such Act and covering property located in urban renewal areas; to mortgages insured under title X of such Act with respect to new communities approved under section 1004 thereof, or, in certain circumstances of local tax abatement, to below-market interest rate mortgages insured under section 221(d)(3) or section 236 of such Act.

(b) Pursuant to clause (3) of the proviso in section 302(b)(1) of the National Housing Act, 12 U.S.C. 1717(b)(1), the \$38,000 maximum set forth in paragraph (a) of this section is hereby raised to \$45,000 in all geographical areas generally in which the Association does business.

(Sec. 309(a), National Housing Act, (12 U.S.C. 1723a(d)), sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this final rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., November 28, 1978.

JOHN H. DALTON,  
President—Government  
National Mortgage Association.

[FR Doc. 78-36115 Filed 12-27-78; 8:45 am]

#### [4630-01-M]

##### Title 26—Internal Revenue

#### CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

##### SUBCHAPTER A—INCOME TAX

[T.D. 7560]

##### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

##### New Jobs Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of full text of final regulations.

SUMMARY: This document sets forth the full text of previously adopted final regulations (43 F.R. 37450, August 23, 1978, F.R. Doc. 78-23598) relating to the new jobs credit.

DATE: The new regulations are effective for taxable years beginning after December 31, 1976, and would apply to credit carrybacks from those years.

FOR FURTHER INFORMATION CONTACT:

George Bradley of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: OC:LR:T, 202-566-3486, not a toll-free number.

##### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On April 3, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 53 of the Internal Revenue Code of 1954, 43 F.R. 13893. The amendments were proposed to conform the regulations to section 202 of the Tax Reduction and Simplification Act of 1977 (91 Stat. 141). After consideration of all comments received regarding the proposed amendments, those amendments were adopted, as revised, by Treasury Decision 7560, published in the FEDERAL REGISTER for August 23, 1978 (43 F.R. 37450). However, T.D. 7560 as published in the FEDERAL REGISTER contained only the changes to the notice of proposed rulemaking published on April 3, 1978, rather than the full text of the final regulations. This document sets forth the full text of the final regulations.

The principal author of these final regulations was Mr. Robert M. Fowler of the Legislation and Regulations Division, Office of Chief Counsel, Inter-

nal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the final regulations, both on matters of substance and style.

Accordingly, the full text of the final regulations adopted by T.D. 7560 is as follows.

ROBERT A. BLEY,  
Director, Legislation and  
Regulations Division.

##### §1.53-1 Separate rule for pass-through of jobs credit.

(a) *In general.* Under section 53(b), in the case of a credit earned under section 44B by a partnership, estate or trust, or subchapter S corporation, the amount of the credit that may be taken into account by a partner, beneficiary, or shareholder may not exceed a limitation separately computed with respect to the partner's, beneficiary's, or shareholder's interest in the entity. The separate computation is required not only for the taxable year with respect to which the credit is earned but also each taxable year to which an unused credit attributable to an interest in such an entity is carried back or over. This section prescribes rules, under the authority of section 44B(b), relating to computation of the separate limitation.

(b) *Application of credit earned.* A credit earned under section 44B by a partnership, estate or trust, or subchapter S corporation shall be applied by a partner, beneficiary, or shareholder, to the extent allowed under section 53(b), before applying any other credit earned under section 44B. For example, if an individual has a new jobs credit from a proprietorship of \$2,000 and from a partnership (after applying section 53(b)) of \$1,800, but the credit must be limited under section 53(a) to \$3,000, the entire \$1,800 credit from the partnership would be applied before any part of the \$2,000 amount is applied.

(c) *Amount of separate limitation.* The amount of the separate limitation is equal to the partner's, beneficiary's, or shareholder's limitation under section 53(a) for the taxable year multiplied by a fraction. The numerator of the fraction is the portion of the taxpayer's taxable income for the year attributable to the taxpayer's interest in the entity. The denominator of the fraction is the taxpayer's total taxable income for the year reduced by the zero bracket amount, if any.

(d) *Portion of taxable income attributable to an interest in a partnership, estate or trust, or subchapter S corporation.*—(1) *General rule.* The portion of a taxpayer's taxable income attributable to an interest in a partnership, estate or trust, or subchapter S corporation is the amount of income from

that entitle the taxpayer is required to include in gross income, reduced by—

(i) The amount of the deductions allowed to the taxpayer that are attributable to the taxpayer's interest in the entity; and

(ii) A proportionate share of the deductions allowed to the taxpayer not attributable to a specific activity (as defined in paragraph (e)).

If a deduction comprises both an item that is attributable to the taxpayer's interest in the entity and an item or items that are not attributable to the interest in the entity, and if the deduction is limited by a provision of the Code (such as section 170(b), relating to limitations on charitable contributions), the deduction must be prorated among the items taken into account in computing the deduction. For example, if an individual makes a charitable contribution of \$5,000 and his distributive share of a partnership includes \$2,000 in charitable contributions made by the partnership, and if the charitable contribution deduction is limited to \$3,500 under section 170(b), then the portion of the deduction allowed to the taxpayer that is not attributable to a specific activity is \$2,500 (\$3,500 × (\$5,000 ÷ \$7,000)) and the portion of the deduction allowed to the taxpayer that is attributable to the interest in the partnership is \$1,000 (\$3,500 × (\$2,000 ÷ \$7,000)).

(2) *Deductions attributable to an interest in an entity.* Examples of deductions that are attributable to the taxpayer's interest in an entity include (but are not limited to) a deduction under section 1202 attributable to a net capital gain passed through the entity, and a deduction attributable to a deductible item (such as a charitable contribution) that has been passed through the entity.

(3) *Computation of the proportionate share of deductions not attributable to a specific activity.* The proportionate share of a deduction of the taxpayer not attributable to a specific activity is obtained by multiplying the amount of the deduction by a fraction. The numerator of the fraction is the income from the entity that the taxpayer is required to include in gross income, reduced by the amount of the deductions of the taxpayer that are attributable to the taxpayer's interest in the entity. The denominator is the taxpayer's gross income reduced by the amount of all the deductions attributable to specific activities.

(4) *Examples.* The method of determining the amount of taxable income attributable to an interest in a partnership, estate or trust, or subchapter S corporation is illustrated by the following examples:

*Example (1).* (a) A, a single individual, is a shareholder in S Corporation, a subchapter S corporation. A is re-



quired to include the following amounts from S corporation is his gross income:

|                               |         |
|-------------------------------|---------|
| Salary                        | \$3,000 |
| Undistributed taxable income: |         |
| Ordinary income               | 8,000   |
| Net capital gain              | 2,000   |
| Total                         | 10,000  |
| Total                         | 13,000  |

A has income from other activities:

|                  |        |
|------------------|--------|
| Ordinary income  | 8,000  |
| Net capital gain | 2,000  |
| Total            | 10,000 |

(b) In order to determine the taxable income attributable to A's interest in S Corporation, it is necessary to reduce the amount of income from S Corporation that A is required to include in gross income by the amount of A's deductions attributable to the interest in S Corporation and by a proportionate share of A's deductions not attributable to a specific activity. These computations are made in paragraph (c) of this example. However, before the computation reducing A's income by a proportionate share of the deductions not attributable to a specific activity can be made, the ratio described in subparagraph (3) of this paragraph (d) must be determined. The numerator of the ratio (the amount of income from S Corporation that A is required to include in gross income, reduced by the amount of the deductions attributable to A's interest in S Corporation) is obtained in paragraph (c) of this example in the process of computing A's taxable income attributable to the interest in S Corporation. The determination of the denominator (A's gross income reduced by the amount of all deductions attributable to specific activities), however, require a separate computation, which follows:

|                                                       |          |
|-------------------------------------------------------|----------|
| Gross income:                                         |          |
| Income from S Corporation                             | \$13,000 |
| Income from other sources                             | 10,000   |
| Total                                                 | 23,000   |
| Less: Deductions attributable to specific activities: |          |
| Section 1202 deduction (50 pct. of \$6,000)           | 3,000    |

|                                                                                                                                                                                                                       |        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| A's gross income reduced by the amount of the deductions attributable to specific activities (denominator of the ratio for determining the proportionate share of deductions not attributable to a specific activity) | 20,000 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|

(c) Computation of the amount of A's taxable income attributable to the interest in S Corporation:

|                                                                          |          |
|--------------------------------------------------------------------------|----------|
| Income from S Corporation that A is required to include in gross income: |          |
| Ordinary income                                                          | \$11,000 |
| Net capital gain                                                         | 2,000    |
| Total                                                                    | 13,000   |

Less: Deductions of the taxpayer attributable to the interest in S Corporation:

|                                             |       |
|---------------------------------------------|-------|
| Section 1202 deduction (50 pct. of \$2,000) | 1,000 |
|---------------------------------------------|-------|

|                                                                                                                        |        |
|------------------------------------------------------------------------------------------------------------------------|--------|
| (Numerator of the ratio for determining the proportionate share of deductions not attributable to a specific activity) | 13,000 |
| Less: Proportionate share of the deductions of the taxpayer not attributable to a specific activity:                   |        |
| Personal exemption deduction (\$750 × \$12,000/\$20,000)                                                               | 450    |
| Zero bracket amount (\$2,200 × \$12,000/\$20,000)                                                                      | 1,320  |
| Total                                                                                                                  | 1,770  |

Portion of A's taxable income attributable to interest in S Corporation:

|  |        |
|--|--------|
|  | 10,230 |
|--|--------|

**Example (2).** (a) C, a married individual with two children, is a partner in the CD Company. C's distributive share of the CD Company consists of the following:

|                                                 |          |
|-------------------------------------------------|----------|
| Ordinary income (other than guaranteed payment) | \$38,420 |
| Guaranteed payment                              | 20,000   |
| Net long-term capital gain                      | 8,000    |
| Net short-term capital loss                     | 2,000    |
| Dividends qualifying for exclusion              | 100      |
| Charitable contributions                        | 500      |

C also has items of income from other sources and deductions, as follows:

|                                            |          |
|--------------------------------------------|----------|
| Ordinary income                            | \$21,500 |
| Short-term capital gain                    | 2,000    |
| Dividends qualifying for exclusion         | 400      |
| Deductions:                                |          |
| Deductible medical expenses                | 18,000   |
| Charitable contributions                   | 4,000    |
| Alimony                                    | 18,000   |
| Interest and taxes on home                 | 8,000    |
| Loss relating to another specific activity | 4,000    |

(b) In order to determine C's taxable income attributable to the interest in the partnership, it is necessary to reduce the amount of income from the partnership that C is required to include in gross income by the amount of C's deductions attributable to the interest in the partnership and by a proportionate share of C's deductions not attributable to a specific activity. These computations are made in paragraph (c) of this example. However, before the computation reducing C's income by a proportionate share of the deductions not attributable to a specific activity can be made, the ratio described in paragraph (d)(3) of this section must be determined. The numerator of the ratio is determined in paragraph (c) of this example in the process of computing C's taxable income attributable to the interest in the partnership. The denominator, however, requires a separate computation, reducing C's gross income by the amount of all deductions attributable to specific activities. This computation is as follows:

|                                            |          |
|--------------------------------------------|----------|
| Gross income: Income from the partnership: |          |
| Ordinary income                            | \$58,420 |
| Net long-term capital gain                 | 8,000    |
| Dividends                                  | 100      |

Less: Proportionate share of dividend exclusion (\$100 × \$100/\$500)

|                             |        |
|-----------------------------|--------|
|                             | 20     |
|                             | 80     |
| Income from other sources:  |        |
| Ordinary income             | 21,500 |
| Net short-term capital gain | 2,000  |

|                                                                       |        |
|-----------------------------------------------------------------------|--------|
| Dividends                                                             | 400    |
| Less: Proportionate share of dividend exclusion (\$100 × \$400/\$500) | 80     |
|                                                                       | 320    |
|                                                                       | 24,000 |
|                                                                       | 26,500 |

Less: Deductions attributable to specific activities:

|                                                                        |       |
|------------------------------------------------------------------------|-------|
| Net short-term capital loss passed through the partnership             | 2,000 |
| Loss related to another specific activity                              | 4,000 |
| Section 1202 deduction attributable to the interest in the partnership | 2,000 |
| Charitable contribution deduction passed through the partnership       | 500   |
|                                                                        | 8,500 |

C's gross income, reduced by the amount of the deductions attributable to specific activities (denominator of the ratio for determining the proportionate share of deductions not attributable to a specific activity)

(c) Computation of the amount of C's taxable income attributable to the interest in the partnership:

|                                                                        |          |
|------------------------------------------------------------------------|----------|
| Distributive share of ordinary income (other than guaranteed payments) | \$38,420 |
| Guaranteed payment                                                     | 20,000   |
| Distributive share of dividends less share of exclusion                | 80       |
| Distributive share of net long-term capital gain                       | 6,000    |
|                                                                        | \$64,500 |

Less: Deductions of the partner attributable to the interest in the partnership:

|                                                                                                                        |        |
|------------------------------------------------------------------------------------------------------------------------|--------|
| Section 1202 deduction (50 pct. of \$4,000)                                                                            | 2,000  |
| Charitable contribution passed through the partnership                                                                 | 500    |
| Net short-term capital loss passed through the partnership                                                             | 2,000  |
|                                                                                                                        | 4,500  |
| (Numerator of the ratio for determining the proportionate share of deductions not attributable to a specific activity) | 60,000 |

Less: Proportionate share of the deductions of the partner not attributable to a specific activity:

|                                                            |        |
|------------------------------------------------------------|--------|
| Section 1202 deduction (\$1,000 × \$60,000/\$80,000)       | 750    |
| Deductible medical expenses (\$18,000 × \$60,000/\$80,000) | 12,000 |
| Charitable contributions (\$4,000 × \$60,000/\$80,000)     | 3,000  |
| Alimony (\$18,000 × \$60,000/\$80,000)                     | 13,500 |
| Interest and taxes on home (\$8,000 × \$60,000/\$80,000)   | 6,000  |

|                                                                               |        |
|-------------------------------------------------------------------------------|--------|
| Personal exemption deduction (\$3,000 × \$60,000/\$80,000)                    | 2,250  |
| Total                                                                         | 27,500 |
| Portion of C's taxable income attributable to the interest in the partnership | 22,500 |

C has a deduction under section 1202 of \$3,000. Of that deduction, \$2,000 is attributable directly to C's interest in the partnership (50 percent of the net capital gain that would result from offsetting the \$6,000 net long-term capital gain and the \$2,000 net short-term capital loss that are attributable to C's interest in the partnership). Since the remaining \$1,000 deduction under section 1202 cannot be attributed directly to either C's income from the partnership or any other specific activity, it must be treated as a deduction not attributable to a specific activity.

(e) *Deductions not attributable to a specific activity*—(1) "Specific activity" defined. A "specific activity" means a course of continuous conduct involving a particular line of endeavor, whether or not the activity is carried on for profit. Examples of a specific activity are:

- A trade or business carried on by the taxpayer;
- A trade or business carried on by an entity in which the taxpayer has an interest;
- An activity with respect to which the taxpayer is entitled to a deduction under section 212;
- The operation of a farm as a hobby.

(2) *Types of deductions not attributable to a specific activity.* Examples of deductions not attributable to a specific activity include charitable contributions made by the partner, beneficiary, or shareholder; medical expenses; alimony; interest on personal debts of the partner, beneficiary, or shareholder; and real estate taxes on the personal residence of the partner, beneficiary, or shareholder. For purposes of this section, in cases in which deductions are not itemized, the zero bracket amount is considered to be a deduction not attributable to a specific activity.

(f) *Carryback or carryover of credit subject to separate limitation.* A credit subject to the separate limitation under section 53(b) that is carried back or carried over to another taxable year is also subject to the separate limitation in the carryback or carryover year. The taxpayer to whom the credit has been passed through shall not be prevented from applying the unused portion in a carryback or carryover year merely because the entity that earned the credit changes its form of conducting business if the nature of its trade or business essentially remains the same. The computa-

tion of the separate limitation in such a case shall reflect the income attributable to the taxpayer's interest in the entity in its revised form. Thus, a shareholder carrying over a credit from a subchapter S corporation may include dividends declared by that corporation after the subchapter S election had been terminated as income attributable to that person's interest in the entity. Similarly, if a partnership incorporates in a carryover year, any income attributable to an interest in the corporation will be regarded, for purposes of computing the separate limitation under section 53(b), as income attributable to an interest in the entity.

[FR Doc. 78-36053 Filed 12-27-78; 8:45 am]

[4330-01-M]

#### SUBCHAPTER B—MISCELLANEOUS PROVISIONS

[T.D. 7581]

### PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

#### Disclosure of Taxpayer Name Information to Officers and Employees of the Bureau of the Census for Certain Statistical Purposes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to the temporary regulations relating to disclosure by the Internal Revenue Service of certain described return information to officers and employees of the Bureau of the Census for certain statistical purposes and related activities. These amendments add to the disclosure authority contained in the existing regulations.

DATE: These regulations authorize the disclosure of taxpayer name information for certain statistical purposes of evaluating the completeness of censuses after the date of publication of this Treasury decision.

FOR FURTHER INFORMATION CONTACT:

Diane L. Renfro of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3459, not a toll-free call.

SUPPLEMENTARY INFORMATION:

#### BACKGROUND

This document contains amendments to the Temporary Regulations on Procedure and Administration relating to disclosure of taxpayer name information to the Bureau of the Census under section 6103(j)(1) of the Internal Revenue Code of 1954 as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1678).

#### DISCLOSURE OF TAXPAYER NAME INFORMATION FOR CERTAIN STATISTICAL PURPOSES

These temporary regulations amend § 404.6103(j)(1)-1(b)(1)(i) of the existing temporary regulations to allow the Service to disclose taxpayer name information to the Bureau of the Census, in addition to other taxpayer identity information (i.e., the taxpayer's address and social security or employer identification number) which the Service is presently authorized to disclose to the Bureau under this particular provision of the regulations, for purposes of developing estimates of census undercounts for geographic areas by comparing such names with name information which the Bureau derives from its own census activities. These census undercounts are then used to evaluate the completeness of census coverage.

Accordingly, § 404.6103(j)(1)-1(b)(1)(i) is amended to permit the disclosure of taxpayer name information where necessary to evaluate the completeness of census coverage.

#### DRAFTING INFORMATION

The principal author of this regulation was Diane L. Renfro of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

#### WAIVER OF CERTAIN PROCEDURAL REQUIREMENTS OF PROPOSED TREASURY DIRECTIVE

A determination has been made by one of the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that there is an immediate need for amendment of the temporary regulations under section 6103(j)(1) of the Internal Revenue Code to allow disclosure of taxpayer name information to the Bureau of the Census in order for it to evaluate the completeness of censuses. Because of the immediate need for such information, compliance with the procedural requirements of paragraphs 8 through 13 of the proposed Treasury directive, relating to improving regulations (43 FR 22319), would



be impracticable, and, therefore, these requirements have not been followed.

#### ADOPTION OF AMENDMENTS TO THE REGULATIONS

In order to amend the Temporary Regulations on Procedure and Administration (26 CFR Part 404) to allow for certain additional disclosures to the Bureau of the Census, such regulations are amended to read as follows:

Section 404.6103 (j) (1)-1 (b) (1) (i) of the Temporary Regulations on procedure and Administration is amended to read as follows:

§ 404.6103 (j) (1)-1 *Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* (1) . . .

(i) Taxpayer identity information (as defined in section 6103 (b) (6) other than the name of the taxpayer except where necessary to evaluate the completeness of census coverage), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identifying number of spouse, if reported;

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 6103 (j) (1) of the Internal Revenue Code of 1954 (90 Stat. 1678; 26 U.S.C. 6103 (j) (1) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,  
Commissioner of  
Internal Revenue.

Approved: December 15, 1978.

DONALD C. LUBICK,  
Assistant Secretary  
of the Treasury.

§ 404.6103(j)(1)-1 *Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Internal Revenue

Service will disclose the following return information reflected on returns of an individual taxpayer to officers and employees of the Bureau of the Census for purposes of conducting and preparing, as authorized by law, intercensal estimates of population and per capita income for all geographic areas included in the general revenue sharing program and demographic statistics programs, censuses and related program evaluation:

(i) Taxpayer identity information (as defined in section 6103 (b) (6) other than the name of the taxpayer except where necessary to evaluate the completeness of census coverage), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identifying number of spouse, if reported;

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[4810-25-M]

#### Title 31—Money and Finance: Treasury

#### SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

#### PART 2—CLASSIFICATION, DOWN- GRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: These regulations supersede the Department's regulations at 31 CFR Part 2 which were first published at 38 FR 19322, July 19, 1973. These regulations implement Executive Order 12065, 43 FR 28949, June 28, 1978 (hereinafter referred to as the Order), and the Information Security Oversight Office Directive, 43 FR 46280, October 5, 1978 (hereinafter referred to as the Directive), relating to the classification, downgrading, declassification and safeguarding of national security information. The Order increases openness in Government by limiting the classification of documents and by accelerating the declassification of other documents, while providing improved protection against unauthorized disclosure of information which requires protection in the interest of national security.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dennis E. Southern, Assistant Direc-

tor (Physical Security), Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220, (202) 376-0763.

SUPPLEMENTARY INFORMATION: The sections in these regulations follow the format of the Directive. These regulations have been submitted to the Information Security Oversight Office in accordance with section 5-401 of Executive Order 12065.

The Department considers all regulations, or amendments to existing regulations, published in the FEDERAL REGISTER and codified in the Code of Federal Regulations to be significant regulations, unless specifically determined and expressly justified to be otherwise. In this regard, it has been determined that this final rule is not subject to the notice and public procedure requirements of Executive Order 12044, March 24, 1978, "Improving Government Regulations," and the Department's regulations implementing that Order, 43 FR 52120, November 8, 1978, because the regulations are "required to implement a statute, an international agreement, a court decision, or a regulatory action of another agency, bureau, or office, and no substantial element of discretion is afforded the rulemaker," and because the regulations are "essentially procedural." Additionally, as these regulations are "rules of agency organization, procedure or practice," notice and public procedure respecting these regulations are not deemed necessary or appropriate under 5 U.S.C. 553(b)(A).

Part 2 of Title 31 is revised as follows:

#### Subpart A—Original Classification

- Sec.
- 2.1 Definitions.
- 2.2 Classification Authority.
- 2.3 (Reserved).
- 2.4 Record Requirements.
- 2.5 Classification Procedure.
- 2.6 Foreign Government Information.
- 2.7 Standard Identification and Markings.
- 2.8 Additional Markings Required.
- 2.9 Abbreviations.

#### Subpart B—Derivative Classification

- 2.10 Definitions.
- 2.11 Responsibility.
- 2.12 Marking Derivatively Classified Documents.
- 2.13 Classification Guides.

#### Subpart C—Downgrading and Declassification

- 2.14 Record Requirements.
- 2.15 Declassification Policy.
- 2.16 Downgrading, Declassification and Upgrading Markings.
- 2.17 Systematic Review for Declassifications.
- 2.18 Procedures for Mandatory Declassification Review.

#### Subpart D—Safeguarding

- Sec.
- 2.19 General.
- 2.20 General Restrictions on Access.
- 2.21 Access by Historical Researchers, Former Presidential Appointees and Employees of Federal Reserve Banks.
- 2.22 Dissemination.
- 2.23 Accountability Procedures.
- 2.24 Storage.
- 2.25 Transmittal.
- 2.26 Telecommunications Transmissions.
- 2.27 Destruction.

#### Subpart E—Implementation and Review

- 2.28 Departmental Committee on National Security.
- 2.29 Departmental Administration.
- 2.30 Bureau Administration.
- 2.31 Briefing of Employees.
- 2.32 Debriefing of Employees.
- 2.33 Applicability.
- 2.34 Disciplinary Action.
- 2.35 Challenges to Classification.

#### Subpart F—General Provisions

- 2.36 Notification.
- 2.37 Posted Notice.

AUTHORITY: Executive Order 12065 and Information Security Oversight Office Directive.

#### Subpart A—Original Classification

##### § 2.1 Definitions.

(a) "Original classification" as used in these regulations means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, and a designation of the level of classification.<sup>1</sup>

(b) "Top Secret" shall be applied only to information, the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(c) "Secret" shall be applied only to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

<sup>1</sup> Parenthetical references are to related sections of Executive Order 12065.

(d) "Confidential" shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security. Examples of identifiable damage include the compromise of information which indicates the strength of ground, air, and naval forces in the United States and overseas areas; disclosure of technical information used for training, maintenance, and inspection of classified munitions of war; revelation of performance characteristics, test data, design, and production data on munitions of war.

##### § 2.2 Classification Authority.

(a) The authority to originally classify national security information as Top Secret, Secret or Confidential within the Department of the Treasury may be exercised by the Deputy Secretary, the Under Secretary (Monetary Affairs), the Under Secretary, the General Counsel, the Assistant Secretary (International Affairs), the Fiscal Assistant Secretary, the Assistant Secretary (Administration), the Assistant Secretary (Legislative Affairs), the Assistant Secretary (Enforcement and Operations), the two Executive Assistants to the Secretary, the Executive Assistant to the Deputy Secretary, the Executive Secretary, the Special Assistant to the Secretary (National Security) and the Special Assistant (Intelligence and Terrorism) to the Assistant Secretary (Enforcement and Operations). The authority inheres in the office and may be exercised by a person acting in that office. These officials are not authorized to delegate authority to classify information as Top Secret or Secret, but may delegate authority to classify information as Confidential.

(b) The authority to originally classify national security information as Secret or Confidential within the Department of the Treasury may be exercised by the Commissioner, Internal Revenue Service; the Assistant Secretary (Tax Policy); the Director, Bureau of Alcohol, Tobacco and Firearms; the Commissioner, U.S. Customs Service; the Director, Bureau of Engraving and Printing; and the Director, U.S. Secret Service. This authority is not redelegable.

(c) The authority to originally classify national security information as Confidential within the Department of the Treasury may be exercised by the Assistant Secretary (Domestic Finance); the Assistant Secretary (Economic Policy); the Assistant Secretary (Public Affairs); the Comptroller of the Currency; the Commissioner, Bureau of Government Financial Operations; the Commissioner, Bureau of the Public Debt; the Director, Bureau of the Mint; and the Director, Federal

Law Enforcement Training Center. Officials authorized to classify information as Confidential can not redelegate such authority.

(d) Delegations of original Confidential classification authority shall be in writing and shall be reported in writing to the Assistant Secretary (Administration). These delegations shall be limited to the minimum number absolutely required for efficient administration. Periodic reviews of such delegations shall be made to insure that the officials so designated have demonstrated a continuing need to exercise such authority.

##### § 2.3 (Reserved).

##### § 2.4 Record requirements.

The Assistant Secretary (Administration) shall maintain a listing by name and position title of the officials in the Office of the Secretary who are authorized under these regulations to originally classify information as Top Secret, Secret or Confidential. An official within the Office of the Secretary with Top Secret classification authority shall report in writing to the Assistant Secretary (Administration) the names and position titles of the officials designated by that official in writing to have original Confidential classification authority. The head of each bureau shall maintain a similar listing of the officials in his/her bureau authorized to apply an original confidential classification and shall furnish a copy of each listing to the Assistant Secretary (Administration). This listing shall be compiled as of January 1, 1979, and updated no less than semi-annually.

##### § 2.5 Classification procedure.

(a) No document originated on or after December 1, 1978, may be classified after the Department of the Treasury has received a request for the document under the Freedom of Information Act, as amended, or the Mandatory Review provisions of the Order (3-5), unless such classification is authorized by the Secretary or Deputy Secretary and unless the classification is consistent with these regulations. Documents originated before December 1, 1978 and subject to such a request may not be classified unless such classification is consistent with the Order and is authorized by the Assistant Secretary (Administration) or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

(b) Classification may not be restored to documents already declassified and released to the public under the Order or prior Orders.



(c) The fact that the information concerns one or more of the criteria for classification of Section 1-301 of the Order does not create a presumption that the information meets the damage tests of Sections 1-302 and 1-303.

#### § 2.6 Foreign government information.

(a) *Identification.* "Foreign government information" is:

(1) Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or

(2) Information produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record (1-303 and 6-103).

(b) *Duration of classification for foreign government information.* (1) Foreign government information shall not be assigned a date or event for automatic declassification unless such is specified or agreed to by the foreign government or international organization of governments.

(2) Foreign government information classified after December 1, 1978, shall be assigned a date for review for declassification up to 30 years from the time the information was classified or acquired. (1-402 and 3-404).

#### § 2.7 Standard identification and markings.

At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

(a) *Identity of classifier.* The identity of the classifier, unless also the signer or approver of the document, shall be shown on a "classified by" line; e.g., "Classified by John Doe" or "Classified by Director, XXX" (1-501(a)).

(b) *Date of classification and office of origin.* The date and office of origin on a document at the time of its origination may be considered the date of classification and identification of the office of origin (1-501(b)).

(c) *Date or event for declassification or review.* The date for automatic declassification or for declassification review shall be shown on a "declassify on" or a "review for declassification on" line; e.g., "Declassify on November 1, 1984," or "Declassify on completion of State visit," or "Review for declassification on November 1, 1998" (1-501(c)). An example of such a marking is as follows:

Classified by \_\_\_\_\_  
☐ Declassified ☐ Review for  
 Declassification on \_\_\_\_\_

(d) *Downgrading markings.* When it is determined (e.g., in a classification guide) that a classified document should be downgraded automatically at a certain date or upon a certain event, that date or event shall be recorded on the face of the document; e.g., "Downgraded to Secret on November 1, 1990" or "Downgraded to Confidential on November 1, 1985" (1-5).

(e) *Duration of classification and identity of extension authority.* Each original classification authority shall set a date or event for automatic declassification no more than six years beyond the date of the original classification. Only officials with Top Secret classification authority may classify information for more than six years from the date of the original classification. The identity of the official who authorizes a date for declassification or for review for declassification that is more than 6 years beyond the date of the document's classification shall be shown on the document, unless that official also is the classifier, signer, or approver of the document. This marking shall be shown substantially as follows: "Extended by (Insert name, date and title of position of Top Secret classification authority)". For classification of foreign government information see § 2.6 (1-502).

(f) *Reason for extension.* When classification is extended beyond 6 years, the reason shall be stated on the document either in narrative form or by reference to the Departmental or bureau regulation or guideline which state the reason for extension. The reason shall be shown substantially as follows: "Reason for extension: (State reason or applicable reference)" (1-502).

An example of such a marking is as follows:

Extended by \_\_\_\_\_  
 on (date) \_\_\_\_\_  
 Reason for extension \_\_\_\_\_

(g) *Overall and page marking of documents.* The overall classification of a document shall be marked, stamped, or affixed permanently at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest overall classification of the document. In any case, the classification marking of the page shall not supersede the classification marking of portions of the page

marked with lower levels of classification (1-501(d)).

(h) *Subjects and titles.* Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipting and reference (1-5).

(i) *Mandatory portion marking.* Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for unclassified shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. A waiver of the portion marking requirement may be granted by the Director of the Information Security Oversight Office. Requests for such waivers shall be made by the Secretary, or his designee to the Director and shall include: (1) Identification of the information or classes of documents for which such waiver is sought, (2) a detailed explanation of why the waiver should be granted, (3) the Department's best judgment as to the anticipated dissemination of the information or class of documents for which waiver is sought, and (4) the extent to which the information subject to the waiver may form a basis for classification of other documents (1-504).

(j) *Material other than documents.* The classification and associated markings prescribed by these regulations shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means (1-5).

(k) *Transmittal documents.* A transmittal document shall indicate on its face the highest classification of the information transmitted by it and the classification, if any, of the transmittal document. For example, an unclassified transmittal document should bear a notation substantially as follows: "Unclassified When Classified Enclosure(s) Is Detached" (1-5).

(l) *Marking foreign government information.* Except in those cases where such markings would reveal intelligence information, foreign government information incorporated in United States documents shall, whenever practicable, be identified in such manner as to ensure that the foreign

government information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent or appropriate U.S. classification. Foreign government information not classified by a foreign government or an international organization of governments, but provided to the United States in confidence by a foreign government or by an international organization of governments shall be classified at an appropriate level and shall be marked with the U.S. classification accordingly (1-5).

#### § 2.8 Additional markings required.

In addition to the marking requirements in § 2.7, the following markings shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification (1-5).

(a) *Restricted data or formerly restricted data.* For classified information containing restricted data or formerly restricted data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued pursuant to the act shall be applied.

(b) *Intelligence sources and methods information.* For classified information involving intelligence sources or methods: "WARNING NOTICE—INTELLIGENCE SOURCES AND METHODS INVOLVED".

(c) *Dissemination and reproduction notice.* For classified information that the originator has determined, pursuant to Section 1-506 of the Order, should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by (Insert appropriate office or official)" (1-506).

#### § 2.9 Abbreviations.

Classified documents that are transmitted electrically may be marked with abbreviations or codes in a single line to satisfy the requirements of § 2.7 and § 2.8 in a manner consistent with economic and efficient use of electrical transmission systems, provided that the full text represented by each such abbreviation or code and its relation to § 2.7 and § 2.8 is readily available to

each expected user of the classified documents affected.

#### Subpart B—Derivative Classification

##### § 2.10 Definition.

"Derivative classification," as used in these regulations, means a determination that information is in substance the same as information that is currently classified, and a designation of the level of classification (2-1).

##### § 2.11 Responsibility.

Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide. Persons who apply derivative classification markings should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed the basis for classification. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued as unclassified or shall be marked appropriately (2-101 and 2-102).

##### § 2.12 Marking derivatively classified documents.

Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(a) The classification authority shall be shown on a "classified by" line; e.g., "Classified by (Insert identity of classification guide)" or "Classified by (Insert source of original classification)." If the classification is derived from more than one source, the single phrase "multiple sources" may be shown, provided that identification of each such source is maintained with the file or record copy of the document (2-102(c)).

(b) The identity of the office originating the derivatively classified document shall be shown on the face of the document (2-102).

(c) Dates or events for declassification or review shall be carried forward from the source material or classification guide and shown on a "declassify on" or "review for declassification on" line. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source material shall be applied to the new information (2-102(c)).

(d) The classification marking provisions of § 2.7 (g)(h) and (i) and also § 2.7(1) are also applicable to derivatively classified documents (2-101(c)).

(e) Any additional marking under § 2.8 appearing on the source material shall be carried forward to the new material when appropriate (2-102(c)); and

(f) Any abbreviation or code permitted under § 2.9 may be applied to derivatively classified documents.

##### § 2.13 Classification guides.

(a) *Requirements.* Classification guides issued pursuant to Section 2-2 of the Order shall:

(1) Identify the information to be protected, using categorization to the extent necessary to insure that the information involved can be identified readily and uniformly (2-201);

(2) State which of the classification designations (i.e., Top Secret, Secret, or Confidential) applies to the information (2-201);

(3) State the duration of classification in terms of a period of time or future event. When such duration is to exceed 6 years, the reason for such extension shall be provided in the guide. However, if the inclusion of classified reasons would result in a level of classification for a guide that would inhibit its desirable and required dissemination, those reasons need be recorded only on or with the record copy of the guide (2-201); and

(4) Indicate how the designations, time limits, markings, and other requirements of the Order, the Directive and these regulations are to be applied (2-201).

(b) *Review and record requirements.* Each classification guide shall be kept current and shall be reviewed at least once every 2 years. Each office within the Office of the Secretary and the respective offices of each Treasury bureau possessing original classification authority for national security information shall maintain a list of all classification guides in current use by them. A copy of each such classification guide shall be furnished to the Assistant Secretary (Administration) (2-2).

#### Subpart C—Downgrading and Declassification

##### § 2.14 Record requirements.

Downgrading and declassification authority may be exercised by:

(a) The official authorizing the original classification, a successor in that capacity, or a supervisory official of either.

(b) Any official specifically authorized in writing by an official authorized to originally classify information as Top Secret or Secret. Officials who are authorized to originally classify information as Top Secret or Secret shall maintain a record, copy to the Assistant Secretary (Administration), of individuals or positions who such



officials designated as downgrading and declassification authorities.

#### § 2.15 Declassification policy.

In making determinations under Sections 3-303 of the Order, officials shall respect the intent of the Order to protect foreign government information and confidential foreign sources (3-303).

#### § 2.16 Downgrading, declassification, and upgrading markings.

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled when practicable (4-102).

#### § 2.17 Systematic Review for Declassification.

(a) *Systematic review guidelines.* (1) *U.S. originated information.* Systematic review guidelines shall be kept current through review at least every 2 years, unless earlier review for revision is requested by the Archivist of the United States (3-402).

(2) *Foreign government information.* No later than November 30, 1979, the Department will develop systematic review guidelines for 30 year old foreign government information. These guidelines will be developed in consultation with the Archivist of the United States and in accordance with the provisions of Section 3-304 of the Order. These guidelines shall be kept current through review by the Secretary at least once every 2 years, unless earlier review for revision is requested by the Archivist of the United States. A copy of these guidelines and any revisions thereto shall be furnished to the Information Security Oversight Office. The Department of State will, upon request, provide advice and such assistance as is necessary to effect foreign government coordination of the guidelines (3-404).

(b) *Systematic review procedures—*(1) *Scheduling for systematic review.* Classified nonpermanent records that are scheduled to be retained for more than 20 years need not be systematically reviewed, but shall be reviewed for declassification upon request. All classified Treasury records 20 years old or older, whether held in storage areas by Treasury or in Federal records centers, shall be surveyed to identify those that require scheduling for future disposition. Such scheduling shall be accomplished before December 1, 1980 (3-401).

(2) *Extending classification after review—*(1) *Foreign government infor-*

mation. The Secretary may extend the classification of foreign government information beyond 30 years, but only in accordance with Sections 3-3 and 3-404 of the Order. This authority may not be delegated. When classification is extended beyond 30 years, a date no more than 10 years later shall be set for declassification or for the next review. Subsequent reviews for declassification shall be set at no more than 10 year intervals (3-404). The burden of proof is on the originating office in the Office of the Secretary or the bureau to show that continued classification is warranted within the terms of the Order, the Directive and these regulations.

(ii) *Notification of addressees.* When classified information is downgraded or declassified in a manner other than originally specified, whether scheduled or exempted, or is upgraded, or is subject to a change in exemption status, the classifier or the custodian of the records shall, to the extent practicable, promptly notify all addressees to whom the information was originally officially transmitted. The recipients of this notification shall notify addressees to whom in turn they have transmitted the classified information.

(iii) *Waivers of further review.* The Secretary may request from the Director of the Information Security Oversight Office a waiver of the 10 year review requirement for both U.S. originated and foreign government information. Such requests shall include a personal certification by the Secretary that the classified information for which the waiver is sought has been systematically reviewed as required, and that a definitive date for declassification could not be determined. Waivers should not be requested unless the results of the review have established an identifiable need to continue classification for a period in excess of 20 additional years. Each request shall include a recommended date or event for subsequent review or automatic declassification (3-401).

(3) *Assistance to the Archivist—*(1) The Secretary shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20 year old U.S. originated information and 30 year old foreign government information accessioned into the National Archives of the United States. Such personnel shall:

(A) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(B) submit to the Secretary recommendations for continued classification that identify documents or specif-

ic categories of information so separated.

(ii) The Secretary shall then make the determinations personally and in writing required under Section 3-401 of the Order as to which documents or categories of information require continued protection. The Secretary shall inform the Archivist of the United States of this determination (3-4).

(4) *Special procedures.* Special procedures for systematic review and declassification of classified cryptologic information and classified information concerning the identities of clandestine human agents promulgated in accordance with the provisions of Section 3-403 of the Order shall be binding on the Department of the Treasury.

(5) *Foreign relations series.* In order to permit the editors of Foreign Relations of the United States to meet the mandated goal of publishing 20 years after the event, the Secretary shall assist the editors in the Department of State by facilitating access to appropriate classified material in their custody and by expediting declassification review of items from their files selected for publication (3-4).

#### § 2.18 Procedures for mandatory declassification review.

(a) *U.S. originated information—*(1) *Action on an initial request.* Requests for mandatory declassification review shall be directed to the Assistant Director (Physical Security), Office of Administrative Programs. Upon request for declassification, pursuant to Section 3-5 of the Order, the following procedures shall apply:

(i) The Assistant Director (Physical Security), Office of Administrative Programs, shall acknowledge receipt of the request.

(ii) Whenever a request does not reasonably describe the information sought, the requestor shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken (3-501).

(iii) The Assistant Director (Physical Security), Office of Administrative Programs, shall determine the appropriate office to take action on the request and shall forward the request to that office.

(2) *Information in the custody of and under the exclusive declassification authority of the Department.* The appropriate declassification official in the action office having custody of the information shall determine whether, under the declassification provisions of Section 3-3 of the Order, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the in-

formation may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Departmental Committee on National Security and a notice that such an appeal must be filed within 60 days in order to be considered (3-501).

(3) *Information classified by agencies other than the Department of the Treasury.* When any unit of the Department of the Treasury receives a request for information in its custody that was classified by another agency, the Assistant Director (Physical Security), Office of Administrative Programs, shall be responsible for forwarding the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable, and with its recommendation to withhold any of the information where appropriate. Unless the agency that classified the information objects on grounds that its association with the information requires protection, the unit that received the request shall also notify the requestor of the referral. After the agency that classified the information completes its review (in coordination with other agencies that have a direct interest in the subject matter), a response shall be sent to the requestor in accordance with the procedures described above (3-501).

(4) *Information classified by Treasury requested from other agencies.* When another agency forwards to Treasury a request for information in that agency's custody that has been classified by Treasury, the Assistant Director (Physical Security), Office of Administrative Programs, shall: (i) advise the other agency as to whether they can notify the requestor of the referral; (ii) review the classified information in coordination with other agencies that have a direct interest in the subject matter; and (iii) respond to the requestor in accordance with the procedures in § 2.18(a)(2). If requested, Treasury's determination shall be communicated to the referring agency (3-501).

(5) *Action on appeal.* Appeals of denials of a request for declassification shall be referred to the Departmental Committee on National Security Information. Within 30 days of receipt of the appeal, the Departmental Committee on National Security Information shall determine whether continued classification is required in whole or in part, notify the requestor of the determination, and make available any information that is declassified and otherwise releasable. If continued classification is required under the provisions of Section 3-3 of the Order, the requestor shall be notified of the rea-

sons thereof. If requested, the Department of the Treasury shall also communicate the appeal determination to any referring agency (3-5 and 3-404(c)).

(6) *Fees.* If the request requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C. 483a (1976), such fees may be imposed at the discretion of the Department's service rendering unit (3-501).

(b) *Foreign Government information.* Except as provided hereinafter, requests for mandatory review for the declassification of classified documents that contain foreign government information shall be processed and acted upon in accordance with the provisions of § 2.18(a). If the Department's unit receiving the request is also the unit that initially received or classified the foreign government information, it shall determine whether the foreign government information in the document may be declassified and released after consulting with other agencies that have subject matter interest. If the Department's unit receiving the request is not the unit that received or classified the foreign government information, it shall refer the request to the appropriate agency, for action as described above, including its recommendation to withhold any of the information where appropriate. In those cases where agency policy or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request (3-5).

#### Subpart D—Safeguarding

##### § 2.19 General.

Information classified pursuant to the Order or prior Orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification (4-1).

##### § 2.20 General restriction on access.

(a) *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in Section 4-3 of the Order, that access is essential to the accomplishment of official Government duties or contractual obligations (4-101).

(b) *Determination of trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by an appropriate agency head based upon appropriate investigations in accordance with applicable standards and criteria (4-101).

§ 2.21 Access by historical researchers, former Presidential appointees and employees of Federal Reserve Banks.

(a) Access may be obtained by (1) written agreements from requestors to safeguard the information to which they are given access as permitted by the Order, the Directive and these regulations, and (2) written consent to the review of their notes and manuscripts for the purpose of determining that no classified information is contained therein. A determination of trustworthiness is a precondition to a requestor's access. If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriations Act, 65 Stat. 290, 31 U.S.C. 483a (1976), the requestor shall be so notified and the fees may be imposed (4-3).

(b) Officials and employees of Federal Reserve Banks may be granted access to classified national security information by the Under Secretary (Monetary Affairs), or his designee when:

(1) The information is classified by a Treasury official or consent for dissemination to the Federal Reserve Bank has been obtained from the originating department.

(2) The Federal Reserve Bank officials or employees need to have knowledge of such information in connection with activities approved by the Under Secretary (Monetary Affairs), or his designee, as being in the interests of the United States; and

(3) The Federal Reserve Bank officials and employees are cleared by the Department of the Treasury under the procedures and standards applicable to Treasury officials and employees.

(4) The Under Secretary (Monetary Affairs), or his designee, shall also be responsible for adjusting or withdrawing the security clearance of any Federal Reserve Bank official or employee who no longer needs access to classified national security information at a particular level in connection with the official performance of duties.

##### § 2.22 Dissemination.

Except as otherwise provided by Section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Suppl V 1975), classified information originating in another agency may not be disseminated outside the Department without the consent of the originating agency (4-403).

##### § 2.23 Accountability procedures.

(a) *Top Secret Control Officers.* Each Treasury bureau and the Office of the Secretary shall designate a Top Secret Control Officer. Top Secret Control



Officers so designated shall receive, maintain current accountability records of, and dispatch Top Secret information, and shall also conduct an annual physical inventory of all Top Secret information. Top Secret Control Officers shall conduct the required physical inventory in the presence of a disinterested individual. They shall complete the same by the first day of May. Any Top Secret document unaccounted for must be reported to the Assistant Secretary (Administration). Top Secret Control Officers shall conduct periodic reviews of Top Secret documents within their control to insure that those Top Secret documents are downgraded or declassified as required.

(b) *Control of Top Secret Information.* (1) A Treasury Department Form TD F 71-01.7 (Top Secret Document Record) shall be attached to the first page or cover of the original and each copy of Top Secret information. The Top Secret Document Record shall be completed by the Top Secret Control Officer, shall identify the Top Secret information attached, and shall serve as a permanent record of the information. All persons, including stenographic and clerical personnel, having access to the information attached to the Top Secret Document Record must sign and date the Treasury Form TD F 71-01.7 prior to accepting responsibility for its custody. The Treasury Form TD F 71-01.7 shall indicate those individuals to whom only oral disclosure is made. The Top Secret Document Record shall remain attached to the Top Secret information until it is either transferred to another U.S. Government agency, downgraded, declassified or destroyed. Whenever any one of these actions is taken, the Top Secret Control Officer shall record the action on the Top Secret Document Record and retain it for a period of three years at which time it may be destroyed.

(2) Top Secret documents shall be sequentially numbered in a calendar year series by Top Secret Control Officers as received by them, and the number shall be posted to the Top Secret document, Treasury Form TD F 71-01.7 and Treasury Form TD F 71-01.5 Revised (Classified Document Accountability Record).

(3) Top Secret Control Officers shall maintain current records of persons within their respective office or bureau who are cleared for access to Top Secret information.

(c) *Waiver.* The Director of the Information Security Oversight Office may grant a waiver with respect to the requirement of an annual inventory for storage systems involving large volumes of information, if security measures with respect to such storage sys-

tems are adequate to prevent access by unauthorized persons (4-103).

(d) *Accountability of classified information.* Treasury Department Form TD F 71-01.5 (Classified Document Accountability Record) shall be the exclusive classified document accountability record for use within the Department of the Treasury. No other logs or records shall be required except for the use of Treasury Form TD F 71-01.7 for Top Secret information. Form TD F 71-01.5 shall be used for single or multiple document receipting, internal and external routing, and as a certificate of destruction. The inclusion of classified information on Form TD F 71-01.5 is prohibited. In the event the subject title is classified, a recognizable short title shall be used, e.g., first letter of each letter word in the subject title. Several items may be transmitted to the same addressee under the cover of one Form TD F 71-01.5. When the original and/or copies of the document are destroyed, the destruction certificate section of the form shall be completed to include the date and method of destruction and signed by the individuals accomplishing the destruction. Form TD F 71-01.5 may be destroyed three years after the date of the final disposition of the document.

(1) *Top Secret information.* Top Secret information shall be subject to a continuous receipt system regardless of how brief the period of custody. Treasury Form TD F 71-01.5 shall be used for this purpose. Top Secret accountability records shall be maintained by Top Secret Control Officers separately from the accountability records of other classified information.

(2) *Secret information.* Receipt on Treasury Form TD F 71-01.5 shall be required for transmission of Secret information between bureaus, offices and separate agencies. Responsible officials shall determine administrative procedures required for the internal control within the respective offices or bureaus. The volume of classified information handled and personnel resources available must be considered in determining the practical balance between security measures imposed and the attainment of operating efficiency.

(3) *Confidential information.* Receipts for Confidential information shall not be required unless the originator clearly indicates that receipting is necessary.

(e) *Restraint on reproduction.* Documents or portions of documents containing Top Secret information shall not be reproduced without the consent of the originating office and any reproduction so authorized must be appropriately controlled. The authority for reproduction shall be noted on the copy from which the reproduction is

made. The office reproducing Top Secret information shall place this information under top Secret control and shall maintain appropriate records to reflect the number of copies reproduced and shall observe all other requirements concerning the control of the distribution of such copies. The reproduction of Secret information shall be placed under the same control as the parent document. Confidential documents may be reproduced without permission of the originating official, office or department. However, all classified information shall be reproduced sparingly and any stated prohibition against reproduction shall be strictly adhered to. The number of copies of documents containing classified information shall be kept to the absolute minimum required to meet operational needs in order to decrease the risk of compromise, administrative burden and to reduce storage costs.

#### § 2.24 Storage.

Classified information shall be stored only in facilities or under conditions adequate to prevent unauthorized persons from gaining access to it (4-103).

(a) *Top Secret.* Top Secret information shall be stored in a GSA-approved, safe-type, steel file cabinet having a built-in, three-position, changeable dial-type combination lock or within an approved vault, or vault-type room, or in other storage facility that meets the standards for Top Secret established under the provisions of § 2.24(c). In addition, the designated security officer of each bureau or the Office of the Secretary shall prescribe such additional supplementary controls as are deemed appropriate to restrict unauthorized access to areas where such information is stored (4-103).

(b) *Secret and Confidential.* Secret and Confidential information shall be stored in a manner and under the conditions prescribed for Top Secret information, or in a container or vault that meets the standards for Secret or Confidential, established pursuant to the provisions of § 2.24 (c) and (d) (4-103).

(c) *Standards for security equipment.* The Directive requires the General Services Administration, in coordination with the Department, to establish and publish uniform standards, specifications, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of all categories of classified information. The Department may, however, establish more stringent standards for its own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and

shall, to the maximum extent practicable, be of the type designated on the Federal Supply Schedule, General Services Administration (4-103).

(d) *Exception to standards for security equipment.* (1) Secret and Confidential information may also be stored in a steel filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable, combination padlock approved by GSA for the purpose. The storage of Secret information in the steel filing cabinets described above requires the use of such supplementary controls as the designated security officer of each bureau or the Office of the Secretary deems necessary to achieve the degree of protection warranted by the sensitivity of the information involved (4-103).

(2) For protection of bulky Secret and Confidential material (for example, weaponry containing classified components) in magazines, strong rooms, or closed areas, access openings may be secured by changeable combination or key-operated, high-security padlocks approved by GSA. When key-operated padlocks are used, keys shall be controlled in accordance with § 2.24(f) (4-103).

(e) *Combinations.* (1) *Equipment in service.* Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever a combination has been subjected to possible compromise, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned (4-103).

(2) *Safe combination records.* Combinations to equipment containing classified information shall be recorded on Treasury Form No. 4032 (Security Container Information). Such forms shall be completed in their entirety. Part 1 of the Form shall be posted on the interior of the top or locking drawer of the safekeeping equipment concerned. The names, addresses and home telephone numbers of personnel responsible for the combination and the classified information stored therein must be posted on Part 1 of the Form. Part II shall be properly completed, inserted in the envelope (Part III) provided and forwarded to the designated central repository for

safe combinations. Parts II and III shall show the appropriate classification marking.

(3) *Safe or cabinet security record.* Each piece of equipment used for the storage of classified information will have attached conspicuously to the outside a General Services Administration Optional Form 62 (Safe or Cabinet Security Record) on which an authorized employee will record the time and date each time they unlock or lock the security equipment, followed by their initials. In addition, at the close of each working day or when a security container is locked at times other than normal duty hours, the person locking the security container will be required to check it to insure that it is locked, and will record the time and date the security container was checked followed by their initials. The checking procedure stated above applies for each normal working day regardless of whether or not the security container was opened on that particular day. A security container will not be left unattended until it has been locked by an authorized person and checked by a second person. Additional safe security requirements are:

(i) Reversible "Open-Closed" signs, available through normal supply channels, shall be used as additional reminders on each security container used for the storage of classified information.

(ii) The tops of security containers shall be kept free of all extraneous matter.

(4) *Equipment out of service.* When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30 (4-103).

(5) *Classified document cover sheets.* In order to alert personnel to the fact that a document or folder is classified and to protect it from unauthorized scrutiny, cover sheets, available through normal supply channels, will be used to cover classified documents when in use. Classified document cover sheets will be removed before classified information is filed. Classified document cover sheets will be removed from classified documents prior to transmission except when the transmission is made internally within a headquarters by courier, messenger or by personal contact.

(6) *Report of loss or compromise.* Any employee of the Department of the Treasury who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to the appropriate bureau head or his designee who shall take appropriate action forthwith. In turn, the originating de-

partment and any other interested department shall be notified about such loss or possible compromise.

(7) *Inquiry.* If the loss or possible compromise occurs in any Treasury bureau, or the Office of the Secretary, the Assistant Secretary (Administration) shall be notified. He shall then direct an immediate inquiry to be conducted for the purpose of taking corrective measures and assessing damages. Based on the results of the inquiry, recommendations shall be made to the Assistant Secretary (Administration) as to the appropriate administrative, disciplinary, or legal action to be taken (4-103).

(f) *Keys.* The Office of the Secretary and all respective Treasury bureaus shall each individually establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container (4-103).

(g) *Responsibilities of custodians.* Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use or under the direct supervision of authorized persons. Custodians shall follow procedures that insure unauthorized persons do not gain access to classified information (4-103).

(h) *Inspections.* Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. Security officers shall insure that periodic inspections are made to determine whether procedural safeguards prescribed by these regulations are in effect at all times (4-103).

#### § 2.25 Transmittal.

(a) *General.* Classified information shall be transmitted between Treasury bureaus and buildings and outside the Department only in accordance with the requirements of these regulations. Classified information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner



cover. Confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. The receipt shall be immediately signed by the recipient and returned to the sender. Within the Main Treasury Building and within each separate bureau building, such information may be transmitted between offices by direct contact of the officials concerned in a single sealed opaque envelope with no security classification category being shown on the outside of the envelope. Classified information shall never be delivered to unoccupied rooms or offices (4-103).

(b) *Transmittal of Top Secret.* The transmittal of Top Secret information shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system specially created for that purpose, or over authorized secure communications circuits (4-103).

(c) *Transmittal of Secret.* The transmittal of Secret information shall be effected in the following manner:

(1) *The 50 States, District of Columbia, and Puerto Rico.* Secret information may be transmitted within and between the 50 States, District of Columbia, and Puerto Rico by one of the means authorized for Top Secret information, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the Secretary (4-103).

(2) *Canadian Government Installations.* Secret information may be transmitted to and between the United States Government and Canadian Government installations in the 50 States, the District of Columbia, and Canada by United States and Canadian registered mail with registered mail receipt (4-103).

(3) *Other areas.* Secret information may be transmitted from, to, or within areas other than those specified in (1) and (2) above by one of the means established for Top Secret information, or by U.S. registered mail through Army, Navy, or Air Force Postal Service Facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government contract vehicles or aircraft, ships of the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately

cleared may be designated as escorts (4-103).

(d) *Transmittal of Confidential information.* Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by U.S. Postal Service certified, first class, or express mail service. Outside these areas, Confidential information shall be transmitted only as is authorized for higher classifications (4-103).

(e) *Transmission by personnel in travel status.* For personnel in travel status, see Treasury Directive TD 71-10.A.

#### § 2.25 Telecommunications transmissions.

Classified information shall not be communicated by telecommunications transmission, except as may be authorized by these regulations with respect to the transmission of classified information over authorized secure communications circuits or systems.

#### § 2.27 Destruction.

(a) *Methods of destruction.* When information classified under the authority of the Order is to be destroyed, destruction shall be by burning, mulching, or shredding in the presence of an individual or individuals specifically designated by the appropriate bureau head.

(b) *Approval of use of mulching and shredding machines.* Prior to a bureau obtaining a mulching or shredding machine, the Office of Administrative Programs, Assistant Director (Physical Security) shall approve the use of such a machine.

(c) *Destruction by burning.* Any classified information to be destroyed by burning shall be torn and placed in containers designated as burnbags and shall be clearly and distinctly labeled "Burn." Burnbags awaiting destruction shall be protected by security safeguards commensurate with the classification or control designation of the information involved.

(d) *Records of destruction.* Each bureau head shall insure that appropriate accountability records are maintained for his bureau to reflect the destruction of classified national security information.

(e) *Destruction of nonrecord information.* Nonrecord classified information such as extra copies and duplicates, including shorthand notes, preliminary drafts, used carbon paper and other material of similar temporary nature, shall also be destroyed by burning, mulching, or shredding as soon as it has served its purpose, but no records of such destruction need be maintained.

### Subpart E—Implementation and Review

#### § 2.28 Departmental Committee on National Security.

There is hereby established a Departmental Committee on National Security Information whose membership shall be comprised of the Assistant Secretary (Administration) who shall serve as chairman and such other officials as shall be designated by a Treasury Department Order. The functions of the Committee include:

(a) The review of all appeals under these regulations from decisions not to declassify documents, except with respect to documents over which the Secretary has extended their classification to more than 20 years;

(b) The review of suggestions and complaints regarding the administration of these regulations;

(c) The responsibility for establishing the Department's policies with respect to the enforcement of the Order, the Directive and these regulations.

#### § 2.29 Departmental Administration.

(a) The Assistant Secretary (Administration) shall enforce the Order, the Directive and these regulations, and establish, coordinate and maintain active training, orientation and inspection programs for employees concerned with classified information.

(b) The Assistant Secretary (Administration) shall establish and maintain a Data Index System control file for all national security information originally classified within the Department.

#### § 2.30 Bureau administration.

Each bureau head and the Office of the Secretary shall designate a security officer and an official to coordinate and supervise the activities applicable to that bureau to maintain the programs of training, orientation, and inspection established by the Office of Administrative Programs, Assistant Director (Physical Security) and to carry out related activities of the Order.

#### § 2.31 Briefing of employees.

All new employees concerned with classified information shall be afforded a security briefing regarding the Order, the Directive and these regulations. Employees concerned with classified information pertaining to intelligence sources, methods, operations, or plans shall be required to read and sign a Security Agreement. All new employees afforded a security briefing shall be provided with copies of applicable laws and pertinent security regulations setting forth the procedures for the protection and disclosure of classified information. All employees

concerned with classified information shall receive periodic reorientation briefings during their employment which are designed to impress upon them their responsibility for exercising care and vigilance in complying with the provisions of the Order, the Directive and implementing regulations.

#### § 2.32 Debriefing of employees.

Any person possessing a security clearance, at any level of employment and without exception, when terminating employment or contemplating temporary separation for a sixty-day period or more, shall be debriefed concerning their continued responsibility to safeguard classified information, and reminded that civil and criminal penalties (including civil service and Departmental disciplinary procedures) are applicable to the violation of these regulations.

#### § 2.33 Applicability.

(a) Any individual, at any level of employment, determined to have been responsible for any unauthorized release or disclosure of national security information shall be notified that his/her action is in violation of the Order, the implementing Information Security Oversight Office Directive, or these regulations. In addition, he/she shall be subject to prompt and stringent action including, as appropriate in the particular case, a warning notice, formal reprimand, suspension without pay, or dismissal, in accordance with applicable personnel rules, regulations and procedures. Where a violation of criminal statutes may be involved, any such case shall be promptly referred to the Department of Justice.

(b) Repeated abuse of the classification process, either by unnecessary or over-classification, or repeated failure, neglect or disregard of established requirements for safeguarding classified information by any officer or employee shall be grounds for appropriate adverse or disciplinary action. Such action may include a warning notice, formal administrative reprimand, suspension without pay, or dismissal, as appropriate in the particular case, in accordance with applicable personnel rules, regulations and procedures.

#### § 2.34 Disciplinary action.

After an affirmative adjudication of a security violation and as the occasion demands, reports of accountable security violations may be placed in the employee's official personnel folder and security file. The security official of the bureau or office concerned shall recommend to the respective management official or bureau head that disciplinary action be taken when such action is indicated. However,

er, should circumstances warrant, the Department may take action under provisions of these regulations, the Order, any implementing Information Security Oversight Office Directives, Executive Order 10450, as amended, or any superseding applicable Executive Order.

#### § 2.35 Challenges to classification.

Holders of classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges or appeals relating thereto shall be acted on within 30 days of receipt and the challenger notified of the results. When requested, anonymity of the challenger shall be preserved (5-404(d)).

### Subpart F—General Provisions

#### § 2.36 Notification.

Notification of unscheduled changes in classification or changes in duration of classification may be by general rather than specific notice (4-102).

#### § 2.37 Posted notice.

If prompt re-marking of large quantities of information would be unduly burdensome, the custodian may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items permanently withdrawn from such storage units shall be marked promptly in accordance with the marking provisions herein. However, when information subject to a posted downgrading, upgrading, or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without marking if the notice is attached to or remains with each shipment (4-102).

Effective date: December 1, 1978.

Dated: December 22, 1978.

W. MICHAEL BLUMENTHAL,  
Secretary of the Treasury.  
[FR Doc. 78-36199 Filed 12-27-78; 8:45 am]

[4910-14-M]

### Title 33—Navigation and Navigable Waters

## CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-41]

### PART 110—ANCHORAGE REGULATIONS

Anchorage Grounds San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment will change the designation of Anchorage No. 8 [33 CFR 110.224(a)(6)(i)] from a "Temporary" anchorage to a "General" anchorage and delete the reference to "the Explosive Anchorage 13 Buoy EX" in Explosive Anchorage No. 13 [33 CFR 110.224(a)(10)(i)]. Restricted use of Anchorage No. 8 is no longer desired. The purpose for Explosive Anchorage 13 Buoy EX is obsolete. These changes to the regulations will allow more efficient use of Anchorage No. 8 and provide safer operation in Anchorage No. 13.

DATES: This amendment is effective December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Howard E. Snow, Office of Marine Environment and Systems (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1934.

SUPPLEMENTARY INFORMATION: This amendment deletes reference to a buoy which will be removed, and thus is a purely editorial change. The other part of this amendment removes restrictions on anchoring from an anchorage where formerly only short term anchoring was permitted and redesignates it as a general anchorage. It is not anticipated that any substantive public comment would be received. Therefore, publication as a notice is unnecessary and contrary to the public interest. The regulation may be made effective in less than 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553).

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant G. S. Karavi-



tis, Project Attorney, Office of the Chief Counsel.

#### DISCUSSION OF REGULATIONS

This proposal will eliminate the present restrictions of intentions and time limit on vessels using Anchorage No. 8 by changing the designation of the anchorage from a "Temporary" to a "General" anchorage. The original rule contained these restrictions as requested by the U.S. Navy Pilots operating in the area. The Commandant of the Twelfth Naval District has indicated that the need for these restrictions no longer exists. Designating Anchorage No. 8 as a general anchorage will allow more efficient use of the anchorage.

It has been determined by the Bar and Inland Pilots and Commander, Twelfth Coast Guard District that Buoy EX which marks the center of Explosive Anchorage No. 13 serves no current useful purpose to the mariner and is now considered a potential hazard to navigation for the Larkspur Ferry on its run up to Corte Madera Creek. Present users of this anchorage have adequate personnel and navigation equipment to ensure, without the aid of a buoy, that they are positioned within the limits of the anchorage. The San Francisco Vessel Traffic Service (VTS) further assures that any vessel using the anchorage is properly located. Elimination of Buoy EX will increase the safety of navigation in this area.

An Environmental Assessment was completed in October 1978 which determined that there would be no impact on the quality of the human environment.

This regulation has been reviewed under DOT Notice 78-1 "Improving Government Regulations" (43 FR 4582) and a Final Evaluation has been prepared and is available for public inspection at the Project Manager and Commander, Twelfth Coast Guard District addresses indicated above.

In consideration of the foregoing Part 110 of Title 33 is amended as follows:

1. By amending § 110.224(a)(6) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California.

(a) . . .

(6) Anchorage No. 8, General Anchorage. (1) In San Francisco Bay bounded by the westerly shore of the Naval Air Station, Alameda, and the following lines: Beginning at Oakland Inner Harbor Light 2 at latitude 37°47'52", longitude 122°19'54"; thence west northwesterly to latitude 37°48'03"; longitude 122°20'57.5"; thence south southwesterly to latitude

37°47'56", longitude 122°21'22.5"; thence southwesterly to latitude 37°47'26", longitude 122°21'41"; thence south southeasterly to latitude 37°47'00", longitude 122°21'30"; then southeasterly to the Alameda Naval Air Station Channel Lighted Bell Buoy 1 at latitude 37°46'38", longitude 122°20'24"; thence easterly to latitude 37°46'37", longitude 122°19'56"; thence northerly to the shore of the Naval Air Station, Alameda, at latitude 37°46'57", longitude 122°19'52.5".

(ii)(a) No vessel anchored in this anchorage may project into the San Francisco Bay South Channel.

2. By amending § 110.224(a)(10) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California.

(a) . . .

(10) Anchorage No. 13, Explosives Anchorage (Temporary General).

(1) In San Francisco Bay east of the Tiburon Peninsula a circular area having a radius of 333 yards centered at latitude 37°55'26", longitude 122°27'27".

(Sec. 7, 38 Stat. 1053, as amended, (33 U.S.C. 471); Sec. 6(g)(1), 80 Stat. 940, (49 U.S.C. 1655(g)(1)); 49 CFR 1.46 (c)(1)).

Dated: December 1, 1978.

J. B. HAYES,

Admiral,

U.S. Coast Guard Commandant.

[FR Doc. 78-36134 Filed 12-27-78; 8:45 am]

[4910-14-M]

[CGD 77-217]

#### PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

##### Editorial Corrections

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These amendments update the Inland Waterways Navigation Regulations by eliminating the regulations for the Coast Guard Seaplane Operating Area in Biscayne Bay, Florida, since this area is no longer used; and by correcting the identity of the Captain of the Port having jurisdiction in Tongass Narrows, Alaska, since this was incorrectly listed in the original publication of the regulations.

EFFECTIVE DATE: December 28, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) George W. Molessa, Jr., Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-4958.

#### SUPPLEMENTARY INFORMATION:

Since the amendments in this document are simply editorial or administrative, the Coast Guard finds for good cause under 5 U.S.C. 553 (b) and (d) that notice and public procedure are unnecessary and that these amendments may be made effective in less than 30 days after publication in the FEDERAL REGISTER. These amendments have been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations" (43 FR 9582, March 8, 1978). A final evaluation has been prepared, and has been included in the public docket.

#### DRAFTING INFORMATION

The principal persons involved in the drafting of this document are: Lieutenant (Junior Grade) George W. Molessa, Jr., Project Manager, Office of Marine Environment and Systems, and Mr. Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

Accordingly, Part 162 of Title 33 of the Code of Federal Regulations is amended as follows:

1. By deleting § 162.70.  
2. By revising § 162.240(d) to read as follows:

§ 162.240 Tongass Narrows, Alaska; navigation.

(d) No vessel shall moor or anchor to any structure of the United States other than mooring piers, wharves, and floats without the consent of the Captain of the Port, Southeast Alaska. The office of the Captain of the Port, Southeast Alaska, is located in Juneau, Alaska.

(33 U.S.C. 1231; 49 CFR 1.46(n)(4).)

Dated: December 21, 1978.

J. B. HAYES,

Admiral, U.S. Coast Guard

Commandant.

[FR Doc. 78-36135 Filed 12-27-78; 8:45 am]

[8320-01-M]

#### Title 38—Pensions, Bonuses and Veterans' Relief

#### CHAPTER I—VETERANS ADMINISTRATION

#### PART 36—LOAN GUARANTY

##### Loans for Conventionally Built Homes

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations applicable to the guaranteed and direct loan programs for conventionally built homes. These amendments increase the loan guaranty entitlement, clarify the eligibility requirements for veterans who served in more than one period of service, reflect VA compliance with the Equal Credit Opportunity Act, and make minor editorial changes. The amendments are for the primary purpose of implementing the Veterans' Housing Benefits Act of 1978.

EFFECTIVE DATE: October 1, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: The Veterans' Housing Benefits Act of 1978, Pub. L. 95-476 (92 Stat. 1497) revised chapter 37 of title 38, United States Code, as it relates to both guaranteed and direct loans. The new law thus requires substantial modification of the § 36.4300 series of VA Regulations which govern guaranty of loans made for the purpose of purchasing or improving a conventionally built home, and the § 36.4500 series of VA Regulations which govern direct loans made by the VA for the same purpose.

The Administrator is now authorized to guarantee 60 percent of the principal amount of a home loan not to exceed \$25,000. Previously, guaranty for home loans had been limited to \$17,500. The amendments to §§ 36.4302 (a), (c), 36.4306(a), 36.4502, and 36.4503(a) implement this provision.

The Act also reduces the active duty service requirements for veterans of the Vietnam era. Any veteran who served 90 days or more on active duty, at least 1 day of which was during the period August 5, 1964, through May 7, 1975, is eligible for loan guaranty benefits. Previously, Vietnam era veterans were required to serve more than 180 days of continuous active duty to be eligible for home loan guaranty benefits. Loan guaranty eligibil-

ity requirements are stated in sections 1802, 1807, and 1818 of title 38, United States Code, and are not restated in the loan guaranty regulations. However, the statutory amendment deleting Vietnam eligibility from section 1818, title 38, United States Code, and inserting it into section 1802, title 38, United States Code, has required a clarifying amendment to § 36.4303(g) pertaining to veterans who served in more than one period of service.

The VA is amending § 36.4301(ii) to reflect the change in the definition of the term "discharge or release." This amendment was mandated by Public Law 95-126 (38 U.S.C. 101(18)).

Section 36.4509 is amended to reflect VA compliance with the Equal Credit Opportunity Act (Pub. L. 93-495, 88 Stat 1521; Pub. L. 94-239, 90 Stat 251).

Minor editorial changes have been made to §§ 36.4342(b) and 36.4520(b) to revise the titles of certain positions and to §§ 36.4302(i), 36.4303 (g) and (j), 36.4519(a), and 36.4520(c) to reflect the agency policy of using precise terms to denote gender. In addition, a minor editorial change has been made to § 36.4303(f) to delete reference to an obsolete procedure.

Compliance with the provisions of § 1.12 of this chapter which requires publication of proposed regulations prior to final adoption is waived in this instance. The substantive changes implement statutory mandates. Those changes not required by statute are editorial rather than substantive. Compliance with § 1.12 would serve little purpose and would not be in the public interest as it would delay implementation of a statute that liberalizes benefits.

The amendments are adopted under authority granted to the Administrator by sections 210(c) and 1803(c)(1) of title 38, United States Code.

Approved: December 20, 1978.

By direction of the Administrator.

RUFUS H. WILSON,  
Deputy Administrator.

1. In § 36.4301, paragraph (ii) is revised to read as follows:

§ 36.4301 Definitions.

(ii) *Discharge or release.* For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 1802(c)). The term "discharge or release" includes (1) retirement from the active military, naval, or air service, and (2) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlist-

ment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable. (38 U.S.C. 101(18))

2. In § 36.4302, paragraphs (a), (c) and (i) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) In respect to a loan to a veteran made under 38 U.S.C. 1810 the guaranty may not exceed sixty (60) percent of the original principal amount or \$25,000, whichever is less. (38 U.S.C. 1803(a), 1810(c))

(c) Subject to the provisions of paragraph (g) of § 36.4303, the following formulas shall govern the ascertainment of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement: (1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from \$25,000. The sum remaining is the amount of available entitlement for use, except that entitlement for mobile home loan purposes may not exceed \$17,500.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from \$25,000. The sum remaining is the amount of available entitlement for use, except that entitlement for mobile home loan purposes may not exceed \$17,500.

(3) If a veteran previously secured a mobile home loan, the amount of entitlement used for mobile home loan purposes is subtracted from \$25,000. The sum remaining is the amount of available entitlement for home loan purposes only. To determine the amount of entitlement available for mobile home purposes, the amount of entitlement previously used for mobile home purposes is subtracted from \$17,500. The sum remaining is the amount of available entitlement for use for mobile loan purposes. (38 U.S.C. 1810(c), 1819(c)(4))

(i) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the



Administrator, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity. (38 U.S.C. 1801(a))

3. Section 36.4303 is amended as follows:

(a) By deleting the words "his receiving" and inserting "the veteran's receipt of" in paragraph (j)(4).

(b) By revising paragraphs (f) and (g) to read as follows:

**§ 36.4303 Reporting requirements.**

(f) Evidence of a guaranty will be issued by the Administrator by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible; nor shall guaranty or insurance evidence be issued on any loan for the purchase or construction of residential property, or for the alteration, improvement or repair thereof, if the application of the veteran to a lender for such loan was made on or after September 15, 1956, unless the Administrator determines that there has been compliance by the veteran with the certification requirements of 38 U.S.C. 1804(c). (38 U.S.C. 1802(c), 1804(c))

(g) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement. The available entitlement of a veteran will be determined by the Administrator as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Veterans Administration. Eligibility derived from the most recent period of service.

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incur-

rence and payment of such liability by the Administrator the resulting indebtedness of the veteran to the United States has been paid in full.

*Provided*, That if the Administrator issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Administrator in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Administrator will be deemed to have incurred actual loss on a guaranteed or insured loan if the Administrator has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Administrator is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Administrator will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual "pay-out" of the entire loan proceeds. (38 U.S.C. 1802(a), 1810(c))

4. In § 36.4306, the introductory portion of paragraph (a) preceding subparagraph (1) is revised to read as follows:

**§ 36.4306 Refinancing of mortgage or other lien indebtedness.**

(a) Except as provided in paragraph (e) of this section any loan for the purpose of refinancing an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as the veteran's home shall be submitted to the Administrator for prior approval. A loan for such purpose shall be eligible for guaranty in an amount not to exceed sixty (60) percent of the loan amount or \$25,000, whichever is less, provided that—(38 U.S.C. 1810(c))

5. In § 36.4342, paragraph (b) is revised to read as follows:

**§ 36.4342 Delegation of authority.**

(b) Designated positions:

Chief Benefits Director  
Director, Loan Guaranty Service  
Director, Medical and Regional Office Center  
Director, VA Center  
Director, Regional Office  
Loan Guaranty Officer  
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be redelegated.

6. Section 36.4502 is revised to read as follows:

**§ 36.4502 Use of guaranty entitlement.**

The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after October 1, 1978, shall be charged with an amount which bears the same ratio to \$25,000 as the amount of the loan bears to \$33,000. The charge against the entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date. (38 U.S.C. 1811(d)(2)(A))

7. In § 36.4503, paragraph (a) is revised to read as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1978, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$25,000. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by the Veterans Administration shall bear interest at the rate of 9% percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

8. Section 36.4509 is revised to read as follows:

**§ 36.4509 Joint loans.**

(a) No loan will be made unless an eligible veteran is the sole principal obligor, or such veteran and spouse or eligible veteran co-applicant are the principal obligors thereon, nor unless

such veteran alone, or together with a spouse or eligible veteran co-applicant, acquire the entire fee simple or other permissible estate in the realty for the acquisition of which the loan was obtained. Nothing in this section shall preclude other parties from becoming liable as comaker, endorser, guarantor, or surety.

(b) Notwithstanding that an applicant and spouse or other co-applicant are both eligible veterans and will be jointly and severally liable as borrowers, the original principal amount of the loan may not exceed the maximum permissible under § 36.4503(a). In any event the loan may not exceed \$33,000. (38 U.S.C. 1811(d)(2)(A) and (3))

9. In § 36.4519, paragraph (a) is revised to read as follows:

**§ 36.4519 Eligible purposes and reasonable value requirements.**

(a) A loan may be made only for the purpose hereinafter set forth in this paragraph, and the loan may not exceed the reasonable value of the property as established by the Veterans Administration:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home;

(2) To purchase a farm on which there is a farm residence to be occupied by the veteran as a home;

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as a home;

(4) To repair, alter, or improve a farm residence or other dwelling owned and occupied by the veteran as his or her home;

*Provided*, The veteran certifies, in such form as the Administrator may prescribe, that he or she has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

10. In § 36.4520, paragraphs (b) and (c) are revised to read as follows:

**§ 36.4520 Delegation of authority.**

(b) Designated positions:

Chief Benefits Director  
Director, Loan Guaranty Service  
Director, Medical and Regional Office Center  
Director, VA Center

Director, Regional Office  
Loan Guaranty Officer  
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be redelegated.

(c) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Administrator under 38 U.S.C. 210(c) or 1815(b) or to sue or enter appearance for and on behalf of the Administrator or confess judgment against the Administrator in any court without the Administrator's prior authorization.

(FR Doc. 78-36200 Filed 12-27-78; 8:45 am)

[6560-01-M]

**Title 40—Protection of the Environment**

**CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY**

[FRL 1010-3]

**PART 65—DELAYED COMPLIANCE ORDERS**

**Delayed Compliance Order for the U.S. Naval Station, Mayport, Florida**

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order (DCO) to the U.S. Naval Station (NS). The DCO requires the NS to bring air emissions from its classified waste incinerator into compliance with certain regulations contained in the federally-approved Florida State Implementation Plan (SIP). The U.S. Naval Station's compliance with the DCO will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the DCO during the period the DCO is in effect.

DATES: This rule takes effect on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Wayne Aronson, Air Enforcement Branch, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, telephone number: 404/881-4253.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to

a prior FEDERAL REGISTER notice proposing issuance of the DCO are available for public inspection and copying during normal business hours at: Air Enforcement Branch (3rd Floor), EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On August 10, 1978, the Regional Administrator of EPA's Region IV Office published in the FEDERAL REGISTER, (43 FR 35506), a notice setting out the provisions of a proposed Delayed Compliance Order for the U.S. Naval Station. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed DCO. No comments or requests for a public hearing were received during the 30-day period provided in the informal proposed rulemaking procedure.

Therefore, a Delayed Compliance Order effective this date is issued to the U.S. Naval Station by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The DCO places the NS on a schedule to bring its classified material incinerator located in Mayport, Florida, into compliance as expeditiously as practicable with Chapter 17-2.64(6)(a)2a, Air Pollution Rules for the State of Florida, a part of the federally-approved Florida State Implementation Plan. The DCO also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the DCO are met, it will permit the U.S. Naval Station's classified waste incinerator to delay compliance with the SIP regulations covered by the DCO until July 1, 1979. The NS is unable to immediately comply with these regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place the U.S. Naval Station on a schedule for compliance with the applicable requirement(s) of the Florida State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: December 14, 1978.

DOUGLAS M. COSTLE,  
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

**PART 65—DELAYED COMPLIANCE ORDERS**

1. By adding an entry to the table in § 65.140 to read as follows:

§ 65.140 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.



| Source                                             | Location      | Docket No. | Date of FR proposal         | SIP regulation involved  | Final compliance date |
|----------------------------------------------------|---------------|------------|-----------------------------|--------------------------|-----------------------|
| U.S. Naval Station (classified waste incinerator). | Mayport, Fla. | DCO-78-2   | Aug. 10, 1978 (43 FR 35506) | Chapter 17-2.04(6)(a)2a. | 7/1/79                |

[FR Doc. 78-36027 Filed 12-27-78; 8:45 am]

[6560-01-M]

[FRL 1023-5]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Gold Bond Building Products, Newark, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Gold Bond Building Products. The Order requires the company to bring air emissions from its tectum manufacturing process at Newark, Ohio, into compliance with certain regulations contained in the federally-approved Ohio State Implementation Plan (SIP). Gold Bond Building Products' compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violation of the SIP regulations covered by the Order.

DATE: This rule takes effect on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Anne Swofford, Attorney, United States Environmental Protection Agency, Region V, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 36651) a notice

setting out the provisions of a proposed State Delayed Compliance Order for Gold Bond Building Products. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Gold Bond Building Products by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Gold Bond Building Products on a schedule to bring its tectum manufacturing process at Newark, Ohio, into compliance as expeditiously as practicable with Regulation OAC 3745-17-07 and OAC 3745-17-11, part of the federally-approved Ohio State Implementation Plan. Gold Bond Building Products is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Gold Bond Building Products to delay compliance with the SIP regulations covered by the Order until June 30, 1978.

Compliance with the Order by Gold Bond Building Products will preclude Federal enforcement action under Section 113 of the Act for violation of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the

Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Gold Bond Building Products is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purpose of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Gold Bond Building Products on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: December 18, 1978.

DOUGLAS M. COSTLE,  
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.401 to read as follows:

§ 65.401 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Orders identified below have been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to each Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

| Source                      | Location      | Date of FR proposal | SIP regulation involved            | Final compliance date |
|-----------------------------|---------------|---------------------|------------------------------------|-----------------------|
| Gold Bond Building Products | Newark, Ohio. | Aug. 18, 1978.      | OAC 3745-17-07;<br>OAC 3745-17-11. | 6-30-78               |

[FR Doc. 78-36028 Filed 12-27-78; 8:45 am]

[6560-01-M]

[FRL 1023-3]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Defense Logistics Agency, Defense Construction Supply Center

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Defense Logistics Agency, Defense Construction Supply Center (Defense Logistics Agency). The Order requires the facility to bring air emissions from three boilers at Columbus, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). The Defense Logistics Agency's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered in the Order.

DATES: This rule takes effect on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

[6560-01-M]

[FRL 1023-4]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for WSC Corporation, Chicago, Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to WSC Corporation. The Order requires the Company to bring air emissions from its coke ovens and basic oxygen process shop at Chicago, Illinois, into compliance with certain regulations contained in the federally approved Illinois State

SUPPLEMENTARY INFORMATION: On September 8, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (42 FR 4004) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for the Defense Logistics Agency.

The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or request for a public hearing were received in response to the proposed notice.

Therefore, a Delayed Compliance Order effective this date is issued to the Defense Logistics Agency by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places the Defense Logistics Agency on a schedule to bring its three boilers at Columbus, Ohio, into compliance as expeditiously as practicable with Regulation AP-3-11, a part of the federally approved Ohio State Implementation Plan. The Defense Logistics Agency is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the Defense Logistics Agency to delay compliance with the SIP regulation covered by the Order until March 31, 1979.

Compliance with the Order by the Defense Logistics Agency will preclude Federal enforcement action under Section 113 of the Act for violations of

| Source                                                        | Location        | Order No.    | Date of FR proposal | SIP regulation involved | Final compliance date |
|---------------------------------------------------------------|-----------------|--------------|---------------------|-------------------------|-----------------------|
| Defense Logistics Agency; Defense Construction Supply Center. | Columbus, Ohio. | EPA-5-79-A-7 | Sept. 8, 1978.      | AP-3-11                 | Mar. 31, 1979         |

[FR Doc. 78-36029 Filed 12-27-78; 8:45 am]

Implementation Plan (SIP). WSC Corporation's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter Kelly, Attorney, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On May 30, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGIS-

the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that the Defense Logistics Agency is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act. U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place the Defense Logistics Agency on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d) 7601)

Dated: December 19, 1978.

DOUGLAS M. COSTLE,  
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in Section 65.400 to read as follows:

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d) (1), (3), and (4) of the Act.

TER (43 FR 23004) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for WSC Corporation. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to WSC Corporation by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places WSC Corporation on a schedule to bring its coke ovens and basic oxygen process shop at Chicago, Illinois, into compliance as expeditiously as practicable with Regulations 203(d)(6)(B)(1)(bb) and



203(d)(6)(B)(iv)(aa), part of the federally approved Illinois State Implementation Plan. WSC Corporation is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit WSC Corporation to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by WSC Corporation will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that WSC Corporation is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place WSC Corporation on a schedule for compliance with the Illinois State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601)

Dated: December 19, 1978.

DOUGLAS M. COSTLE,  
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 65—DELAYED COMPLIANCE ORDERS

1. By amending Section 65.180 to read as follows:

Section 65.180 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

| Source          | Location          | Order No.    | Date of FR proposal | SIP regulation involved                       | Final compliance date |
|-----------------|-------------------|--------------|---------------------|-----------------------------------------------|-----------------------|
| WSC Corporation | Chicago, Illinois | EPA-5-79-A-1 | May 30, 1978.       | 203(d)(6)(B)(iv)(bb)<br>203(d)(6)(B)(iv)(aa). | 7/1/79                |

[FR Doc. 78-36209 Filed 12-27-78; 8:45 am]

[6560-01-M]

[FAL 1016-5]

#### PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order issued by the State of Idaho Department of Health and Welfare, to U & I Sugar, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Idaho Department of Health and Welfare to U & I Sugar, Inc. The Order requires the company to bring air emissions from its sugar refinery at Idaho Falls, Idaho into compliance with the federally-approved Idaho State Implementation Plan (SIP). Because of the Administrator's approval, U & I Sugar, Inc.'s compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John E. Pfander, Environmental Protection Agency, Idaho Operations Office, 422 West Washington Street, Boise, Idaho 83702, Telephone: (208) 384-1450.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101—11th Floor (11B).

SUPPLEMENTARY INFORMATION: On September 29, 1978 the Regional Administrator of EPA's Region 10

Office published in the FEDERAL REGISTER, 40 CFR 44868, a notice proposing approval of a delayed compliance order issued by the State of Idaho Department of Health and Welfare to U & I Sugar, Inc. The notice asked for public comments by October 30, 1978 on EPA's proposed approval of the Order. No comments were received in response to the proposed notice.

Therefore, the delayed compliance order issued to U & I Sugar, Inc. is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places U & I Sugar, Inc. on a schedule to bring its sugar refinery at Idaho Falls, Idaho into compliance as expeditiously as practicable with Regulations E, G, H and I of the Rules and Regulations for Control of Air Pollution in Idaho, a part of the federally-approved Idaho State Implementation Plan. The Order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit U & I Sugar, Inc. to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the Order has been approved by EPA, compliance with its terms will preclude federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect. Citizen suits under Section 304 of the Act are similarly precluded. If the administrator determines that U & I Sugar, Inc. is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place U & I Sugar, Inc. on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Idaho State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601)

Dated: December 21, 1978.

DOUGLAS M. COSTLE,  
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 65—DELAYED COMPLIANCE ORDERS

1. By amending § 65.171 to read as follows:

| Source            | Location            | Order No. | SIP regulations involved | Date of FR proposal | Final compliance date |
|-------------------|---------------------|-----------|--------------------------|---------------------|-----------------------|
| U & I Sugar, Inc. | Idaho Falls, Idaho. | 102       | IDHW Reg. E, G, H & I.   | Sept. 29, 1978      | July 1, 1979          |

[FR Doc. 78-36208 Filed 12-27-78; 8:45 am]

[6560-01-M]

#### SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1029-8; PP 8E2111/R190]

#### PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide O,O-dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate on kiwi fruit. The regulation was requested by Mobay Chemical Corp. This rule establishes a maximum permissible level for residues of the subject pesticide on kiwi fruit.

EFFECTIVE DATE: Effective on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy A. Gardner, Product Manager (PM) 15, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, D.C. (202) 426-9425.

SUPPLEMENTARY INFORMATION: On October 24, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 49547) in response to a pesticide petition (PP 8E2111) submitted to the Agency by Mobay Chemical Corp., Chemagro Agricultural Div., P.O. Box 4913, Kansas City, Mo. 64120. This petition pro-

posed that 40 CFR 180.154 be amended by the establishment of a tolerance for residues of the insecticide O,O-dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate in or on the raw agricultural commodity kiwi fruit at 10 parts per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.154 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before January 29, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW, Washington, D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on December 28, 1978, Part 180, Subpart C, § 180.154 is amended by adding a tolerance for residues of the subject pesticide on kiwi fruit at 10 ppm as set forth below.

Dated: December 20, 1978.

EDWIN L. JOHNSON,  
Deputy Assistant Administrator  
for Pesticide Programs.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Part 180, Subpart C, § 180.154 is amended by alphabetically inserting kiwi fruit at 10 ppm in the table to read as follows:

§ 180.154 O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate; tolerances for residues.

| Commodity  | Parts per million |
|------------|-------------------|
| Kiwi fruit | 10                |

[FR Doc. 78-36026 Filed 12-27-78; 8:45 am]

[6560-01-M]

[FRL 1030-1; PP 7E1953/R189]

#### PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Aldicarb

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the pesticide aldicarb on coffee beans. The regulation was requested by Union Carbide Corp. This rule establishes a maximum permissible level for residues of aldicarb on coffee beans.

EFFECTIVE DATE: Effective on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C., 202-426-9426.

SUPPLEMENTARY INFORMATION: On October 16, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 47575) in response to a pesticide petition (PP 7E1953) submitted to the Agency by Union Carbide Corp., 1730 Pennsylvania Ave. NW., Washington, D.C. 20006. This petition proposed that 40 CFR 180.269 be amended by the establishment of a tolerance for combined residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio)propionaldehyde O-(methylcarbamoyl)oxime) and its cholinesterase-inhibiting metabolites 2-methyl-1-(methylsulfinyl) propionaldehyde O-(methylcarbamoyl)oxime and 2-methyl-1-(methylsulfonyl)propionaldehyde O-(methylcarbamoyl) oxime in or on the



# PART 1061—EMERGENCY ENERGY CONSERVATION PROGRAM

## Subpart—Fiscal Year 1979 Crisis Intervention Program

AGENCY: Community Services Administration.

ACTION: Final rule.

**SUMMARY:** The Community Services Administration is filing a final rule on its FY79 Crisis Intervention Program. This rule is being issued in order to allocate promptly the funds provided under CSA's FY 1979 Continuing Resolution to deal with winter-related energy crises. This rule details the initial allocation of these funds and sets forth project application and reporting requirements.

**DATES:** This rule is effective December 27, 1978.

## FOR FURTHER INFORMATION CONTACT:

Mr. David Soble, Community Services Administration, Office of Community Action, Washington, D.C. 20506, Tel. 202-254-5280 OR 632-6503, Teletypewriter: 202-254-8218.

**SUPPLEMENTARY INFORMATION:** Section 222(a)(5), the "Emergency Energy Conservation Services" program describes programs and activities for which the Director may provide financial assistance to "... lessen the impact of the high cost of energy on (low income individuals and families, including the elderly and the near poor) and to reduce individual and family consumption." Included are activities related to crisis intervention, that is, intervention to prevent or alleviate hardship or danger due to a winter energy crisis. Activities initiated under this Section of the Act are also governed by the basic purpose of Title II which is to "... stimulate a better focusing of all available local, state, private, and federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas to attain the skills, knowledge, and motivations and secure the opportunities for them to become fully self-sufficient." These legislative goals, were used by CSA as the major guideline in developing the rule which will govern its FY79 program to address poor people's winter-related energy emergencies.

CSA is not, and was not created to be, a Federal agency administering income transfer programs. Nor is the intent of its authorizing legislation that any of its programs be such. The program outlined in this rule is in

keeping with the intent and spirit of the Economic Opportunity Act of 1964, as amended. This final rule is effective immediately as a thirty day waiting period would be impractical and contrary to the public interest since winter weather now exists and energy-related emergencies may occur at any time. However, CSA does welcome comments on this rule.

These comments will be considered and the rule changed if warranted.

WILLIAM W. ALLISON,  
Acting Director.

45 CFR 1061 is amended to add the following:

- Sec.  
1061.52-1 Applicability.  
1061.52-2 Policy.  
1061.52-3 What these funds can be used for.  
1061.52-4 Duration of Program.  
1061.52-5 Availability and distribution of funds.  
1061.52-6 Organizations eligible for funding under this program.  
1061.52-7 Who can be served by this program.  
1061.52-8 Reporting requirements for all grants made under this program.  
1061.52-9 Appeal from denial of assistance.  
1061.52-10 Non-Federal share requirement.  
1061.52-11 Clearinghouse review procedures (A-95).  
1061.52-12 Limitation of project expenditures.  
1061.52-13 Maintenance of effort.  
1061.52-14 Audits.  
1061.52-15 Delegation of Authority.

**AUTHORITY:** Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

## § 1061.52-1 Applicability.

This subpart is applicable to grants funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by the Community Services Administration.

## § 1061.52-2 Policy.

CSA's FY79 Crisis Intervention Program is not intended to be an income transfer program; nor does it entitle any person or household to a certain amount and/or form of assistance. Rather, the primary intent of the program is to make available to grantees funds which will enable them to respond to winter-related energy crises which endanger the health and survival of eligible low-income households, and result in substantially increased energy costs.

## § 1061.52-3 What these funds can be used for.

(a) Funds made available under this program shall be used only to assist low-income families who experience substantially increased energy costs and/or face life- or health-threatening

situations caused by winter-related energy emergencies.

(b) Funds shall be used to cover such items as blankets and warm clothing, temporary loan of space heaters, emergency furnace repairs, emergency firewood and fuel deliveries, temporary shelter, food and other supportive services, emergency replacement of broken window panes, and temporary/emergency repairs to housing otherwise unfit for habitation.

(c) During FY 1979, payment of outstanding bills of regulated utilities is allowable only in those areas where shutoffs are not legally prohibited and where the applicant for assistance can produce a notice to disconnect. Payment of other outstanding fuel bills is allowable only where: (1) the applicant has less than a week's supply of fuel; (2) the fuel cost or usage is significantly higher for the applicant; the local administering agency certifies that it has been unable to arrange for further fuel delivery without payment; and (4) the applicant establishes an inability to pay for the fuel.

(d) Fuel and utility bills shall include, but not be limited to, those for operating cooking stoves, furnaces, space heaters, and wood-burning stoves. Telephone, Cable-TV and other non-energy bills are not eligible for payment. Grantees and local administering agencies shall not exclude any energy-related or fuel expense from coverage under this program except as provided above.

(f) Money assistance will be limited to voucher payments and payments made directly to suppliers of fuel or other energy.

(g) No funds made available under this program shall be used to reimburse States for assistance provided to low-income households in response to winter-related emergencies.

(h) The restrictions of paragraph (c) apply only to payment of outstanding fuel and utility bills. Where a local administering agency determines that an income eligible household is experiencing an energy-related crisis which is endangering life or health, assistance as outlined in paragraph (b) other than the payment of outstanding fuel for utility bills, shall be allowable in response to the household crisis.

## § 1061.52-4 Duration of program.

(a) Grants will be effective January 1, 1979.

(b) No grant funds may be committed by grantees to provide assistance to certified households after May 31, 1979. Administrative funds may be committed until June 30, 1979.

(c) All grants will have a termination date of June 30, 1979.

(d) Grant funds which remain uncommitted by the grantee after June

30, 1979 shall be deobligated and returned by check to CSA for refund to the U.S. Treasury.

## § 1061.52-5 Availability and distribution of funds.

(a) Since funds for this program are available near the beginning of the heating season it has been possible this year for CSA to design, and the grantees to put in place, a program which can stress preventive activities in addition to those which deal with crisis and disaster situations.

(b) Under certain circumstances, there are areas of the country whose normal winter weather may be severe enough to cause a severe energy-related winter emergency which cause hardships for poor people. In addition there are conditions which seriously aggravate such hardships, such as or precipitous increases in fuel or utility prices. Finally there are unforeseen winter emergencies which result in low-income people needing immediate attention and assistance, such as a Federally declared winter-related disaster which leaves eligible households without access to food, fuel or utilities.

(c) To deal with all of these situations—the foreseen and the unforeseen—CSA will make funds available immediately for use at the local level and create a Director's national contingency fund to be available for demonstrated need in both those areas receiving initial funding and in other areas. Following are the procedures for applying or distributing funds and criteria for funding.

(d) **Distribution.**—(1) **Allocation and purpose.** (i) CSA will allocate on a one-time basis for crisis intervention activities \$15 million by formula to States or areas within States having population-weighted average (normal) annual heating degree days of 3,000 or more. (For listing of population-weighted annual heating degree days, by State, see Appendix B). These funds are in addition from any other CSA programs providing crisis intervention assistance.

(ii) The Governor in each of these states will be requested to assist CSA Regional Directors in developing a within-state allocation plan and to recommend agencies which can provide assistance in those areas not covered by a Community Action Agency and where a CAA is not able to do so. Governors also will be requested to waive the thirty-day review and disapproval period set out in Section 242 of the Economic Opportunity Act of 1964 as amended.

(iii) **Administrative Costs.** The total one-time grant will also include the greater of an additional \$8,000 per grantee or an amount equal to fifteen percent of the crisis intervention funds for administrative costs.

(2) **Application process.** (i) Based on the results of the within-state allocation process described above, CSA Regional Directors will review and approve Forms 314.

(ii) Special Conditions will be attached to all grants requiring submission, within 30 days of the obligation date of the grant, of a CSA Form 419, Summary of Work Programs and Budget.

(e) **Winter-related disaster relief.**—(1) **Purpose.** Funds will be available to deal with situations which arise from winter-related disasters creating energy emergencies to assure that the additional energy costs incurred by low-income families due to the disaster are met pending receipt of other disaster resources. This is seen as short-term, gap-filling assistance, designed to meet the immediate disaster-related energy needs of the poor and the elderly. These funds may be used for all activities outlined in Section 1061.52-3 including payment of utility and fuel bills during the disaster period if there is no other way of meeting the needs of eligible households.

(2) **Application process.** (i) When a Governor requests the declaration of a winter-related disaster by the Federal government, the appropriate CSA Regional Director, on the basis of the information in that request and other available information may request the Director of CSA to provide funds to assure that low-income people facing life- and health-threatening conditions will receive assistance for substantially increased energy costs. The request shall indicate the extent of the need the agencies which are to receive the funds, and the views of the State.

(ii) If after consultation with the Federal Disaster Assistance Administration (or its successor), the Director determines that a winter-related disaster has created conditions which will endanger the health and/or cause severe hardship to eligible low-income individuals and households, CSA will immediately inform by telegram the Governor and the appropriate CSA Regional Office of the amount of funds available for the affected disaster area. CSA Regional Directors will be requested to supplement grants of existing CSA Crisis Intervention Grantees in the disaster affected area. In states or areas of states which have not previously received funds under this program, CSA Regional Offices will make new grants to Community Action Agencies in the disaster affected area or, (in the case of an area not served by a CAA, to other eligible grantees recommended by the Governor of the State). CSA Regional Directors may authorize existing CSA grantees to transfer needed funds from other program accounts, pending receipt of grant funds. Such authority

raw agricultural commodity coffee beans at 0.1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.269 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before January 12, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on December 28, 1978, Part 180, Subpart C, § 180.269 is amended by adding a tolerance for residues of aldicarb on coffee beans at 0.1 ppm as set forth below.

Dated: December 20, 1978.

EDWIN L. JOHNSON,  
Deputy Assistant Administrator  
for Pesticide Programs.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348a(e)).

Part 180, Subpart C, § 180.269 is amended by alphabetically inserting coffee beans at 0.1 ppm in the table to read as follows:

## § 180.269 Aldicarb; tolerances for residues.

| Commodity:   | Parts per million |
|--------------|-------------------|
| Coffee beans | 0.1               |

[FR Doc. 78-36025 Filed 12-27-78; 8:45 am]

[6315-01-M]

Title 45—Public Welfare

## CHAPTER X—COMMUNITY SERVICES ADMINISTRATION



will be limited by CSA Regional Directors to transfer of an amount no greater than the amount of the anticipated grant. If the grant is finally approved, funds thus transferred will be reimbursable with grant funds.

(iii) Grantees may expend up to ten percent (10%) of their Disaster Relief Grant funds for administrative and program support costs.

(f) *Other winter-related energy needs.*—(1) *Purpose.* Realizing that some areas or states will have needs greater than those which can be met with the resources available through the crisis intervention grants, CSA will make available on a one-time basis additional crisis intervention funds to States and localities which can demonstrate the presence of a Winter-Related Energy Need affecting the fuel of dwellings of low-income families. Such a winter-Related Energy Need will be deemed to exist when the Governor of a State:

(1) Has declared that a winter-related energy emergency exists and as a result of such declaration substantial state funds are made available to provide energy emergency assistance to low-income families above or on at least an equal basis with other households; or

(2) Determines that the emergency exists because:

(i) There is within the State a shortage or unavailability of normal fuels on a temporary or permanent basis to low-income households, causing extraordinary expense because of the necessity for purchase and delivery of fuel on an emergency basis, or substitution of alternative fuels; or

(ii) There has been within the State or an area within the State an increase of twenty (20%) percent or more in the price of a major fuel or utility service since May 1, 1978, or

(iii) The State or an area within the State is experiencing excessively cold weather that represents, any time after January 1, 1979, a cumulative total of population weighted heating degree days for the year beginning July 1, 1978, which is three hundred (300) heating degree days or more higher than the normal cumulative total for that date and at least 600 heating degree days for the month for which assistance is given.

(2) *Limitation on grants.* CSA intends that there will be no more than one grant to any geographical area under this paragraph. Once the existence of a Winter-Related Energy Need has been determined by the Director of CSA, one-time grants will be made in amounts calculated by CSA to best meet that need in an equitable manner, taking into consideration the existing or potential needs in other areas. Grantees must recognize that no additional funds for Winter-Related

Energy Needs will be available to them for the balance of the winter season, and that they should plan the use of these resources accordingly. The only anticipated exception would be in the case of funds for Winter-Related Disaster Relief under paragraph (e), funds for which are severely limited, and would only be made available after a finding that a disaster has in fact occurred.

(3) *Application process.* (i) Eligible grantees will ask the Governor of their State to make a determination that a Winter-Related Energy Need exists in their area, and to request the Director of CSA to provide funds to meet the needs. (Governors will initiate requests for areas not served by a CAA.) The request will include a description of the extent of the need, a description of the basis for determination that the need exists, a finding that there is a lack of readily available resources to meet that need, the amount and type of funding committed by the State for energy emergency assistance, and identification of areas within the State in which the need exists. The SEOO will advise the Governor of the accuracy of the data on which the request is based.

(ii) The Governor of any State may, without a request from any eligible grantee within the State initiate a request to the Director of CSA for assistance to the entire State or any area within the State on the basis of a determination of need as set forth in paragraph (1), above. Such requests shall include the elements described in sub-paragraph (i).

(iii) Upon the approval of a Governor's request by the Director of CSA, CSA Regional Directors will be immediately requested to supplement the grants of existing CSA Crisis Intervention grantees in the area covered by the request. In the case of requests from Governors of States which have not previously received funds under this program, CSA regional offices may make new grants to Community Action Agencies in the affected area (or in the case of an area not served by a CAA, to other eligible grantees recommended by the Governor of the State). CSA Regional Directors may authorize existing CSA grantees to transfer needed funds from other program accounts, pending receipt of grant funds. Such authority will be limited by CSA Regional Directors to transfer of an amount no greater than the amount of the anticipated grant. If the grant is finally approved, funds thus transferred will be reimbursable with grant funds.

(iv) Grantees may expend up to ten percent (10%) of grant funds for administrative and program support costs.

(g) *Role of the SEOO.* There may be a number of States and territories which will not receive funds under the initial distribution of crisis intervention funds but which may be eligible to apply for funds under paragraphs (e) and (f), above. Therefore, to assist the Governor with information and data which will make it possible to respond quickly to emergencies or needs which may arise, CSA is requesting that SEOOs assist CSA Regional Directors to develop within-State allocation percentages, identify agencies which would serve areas not served by a CAA, and develop base line data that will assist in the analysis of winter-related energy needs.

#### § 1061.52-6 Organizations eligible for funding under this program.

CSA intends these funds to be used by Community Action Agencies to carry out activities under this program. The only anticipated exceptions will be agencies identified by CSA Regions to serve non-CAA covered areas, Migrant and Seasonal Farmworkers or Native Americans. Grantees may enter into delegate agency agreements with other agencies to carry out part or all of the work program.

#### § 1061.52-7 Who can be served by this program.

(a) Applicants for assistance who have access to direct assistance through other supportive service networks such as welfare may only receive assistance under this program where the grantee or local administering agency has determined that such other service networks cannot respond in a timely and effective manner.

(b) All households assisted by this program must meet both income and program eligibility requirements.

(1) *Income eligibility.* (i) Individuals and households whose income is no higher than 125% of the CSA poverty guidelines. (See Appendix A for income chart);

(ii) Individuals of age 60 and above, whose income does not exceed 125% of the CSA poverty guidelines and/or elderly individuals and couples (Age 60 and over) who receive Supplementary Security Income (SSI). (See Appendix A for income chart).

(2) *Determination of Income Eligibility Required of Grantees.* Proof of income eligibility is required. The period for determining eligibility will be not more than 12 months nor less than the 90 day period preceding the request for assistance. If proof of income eligibility is unobtainable by the local administering agency, applicant may qualify for other than money assistance in the paying of outstanding bills by signing a certification of income eligibility; but no payment of outstanding bills shall be allowable

without proof of income. In cases where income eligibility is based on a certification, grantees must make a reasonable number of recorded spot checks to verify income eligibility and so advise applicants in advance by printing such a notice together with reference to 18 USC 1001 on the application.

(3) *Program eligibility.* If a household meets income eligibility guidelines, program eligibility must be established before the household is eligible to receive assistance under this program. That is, the household must be experiencing an energy-related crisis which is endangering life or health and results in substantially increased energy costs.

(i) As noted in paragraph (a), applicants for assistance who have access to direct assistance through other supportive service networks such as welfare may only receive assistance under this program where the grantee of local administering agency has determined that such other service networks cannot respond in a timely and effective manner. As part of this determination, local administering agencies have an affirmative responsibility to assure that applicants have received the full measure of support that is due them from the supportive networks noted in paragraph (a) before providing assistance under this program.

(ii) There are, in effect, two levels of program eligibility under this program, depending on the type of assistance provided. As noted in Section 1061.52-3, to be eligible for assistance in payment of an outstanding utility or fuel bill, the applicant must have received a notice of shut-off, or, in the case of non-regulated fuel have less than a week's supply of fuel on hand. In the latter case the local administering agency must certify that it has been unable to arrange for further fuel delivery without at least partial payment of the outstanding bill. In addition, local administering agencies must either verify the applicant's existing supply of fuel through on-site inspection or contact with the applicant's fuel dealer, or obtain a statement from the applicant as to the supply. In the latter case the agency must spot-check through on-site inspection a reasonable number of such statements.

(iii) The above restrictions are not applicable with regard to the provision of assistance other than the payment of outstanding fuel and utility bills. At the same time, if income eligible families have ample supplies of fuel, and are not faced with another type of crisis such as an inoperative furnace or broken water pipes, they are not eligible for assistance under this program just because they have large energy bills outstanding. If on the other

hand, a family has paid at great sacrifice a large energy bill and as a result has insufficient money to buy needed food or other necessities then they would be eligible for assistance.

(4) *Priorities.* Priority shall be given to persons facing life threatening situations and to elderly persons (age 60 and over) who meet all eligibility requirements.

(5) *Income Disregard.* No payment made under this program shall be considered income for the purpose of determining eligibility for benefits or level of benefits under another program of assistance, including, but not limited to, public assistance, veterans benefits, food stamps Supplemental Security Income, Medicaid-only, Indo-China Relief, or The WIC Program.

#### § 1061.52-8 Reporting requirements for all grants made under this program.

(a) *Financial reporting.* Activities carried out under this program shall be reported as part of grantee's regular SF-269. Grantees shall follow normal procedures for submission of the SF-269, i.e., one copy to the appropriate CSA Regional Office and one copy to Grants Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street N.W., Washington, D.C. 20506.

(b) *Project progress review reports.* Grantees will be required to submit Project Progress Review reports covering grant activities under this program (CSA Form 440) to the appropriate CSA Regional Office with a copy forwarded to CSA Headquarters. Attention: Energy Programs. Reports will cover activities undertaken during the entire grant period, and will contain a separate narrative account of any assistance provided pursuant to a disaster declared under Section 1061.52-5, above. These reports will be due July 1, 1979. The following activities completed during the reporting period shall be addressed in section 1A of the submission.

(1) Total number of households which were assisted under all of the eligible activities of this program. This should be a nonduplicative count, and of this number:

(i) Number of elderly individuals assisted whose income is 125% or less;

(ii) Total number of households whose outstanding utility/fuel bills were paid in whole or in part, and total dollar amount obligated for this purpose; and of that number of households, total number whose outstanding utility/fuel bills exceeded \$250;

(iii) Total number of households which received other forms of emergency energy assistance under this program and total amount obligated for this purpose;

(2) Total number of individuals residing in households served as accounted for in (1) above.

(3) Number of reviews of denial of assistance requested and the results thereof.

#### § 1061.52-9 Appeal from denial of assistance.

(a) Each local program operator shall establish and make known to all applicants procedures for review of the denial of assistance under this program to any household or person, which shall include at a minimum:

(1) Written application forms;

(2) Notification in writing of the reasons for denial of assistance, and of the opportunity to submit additional written information which the applicant believes would warrant favorable determination of eligibility;

(3) Provision for review of a denial of an application for assistance by the program operator's executive officer, or his/her designee, and an opportunity for provision of any additional information by the applicant; and

(4) Notice in writing of the program operator's final decision on review.

(b) A written description of these review procedures shall be maintained on file by the program operator and available for public inspection.

#### § 1061.52-10 Non-Federal share requirement.

The non-Federal share requirements are waived for all Crisis Intervention activities under Program Account 80 (See CSA Instruction 6802-3a for waiver criteria.)

#### § 1061.52-11 Clearinghouse review procedures (A-95).

CSA has requested and received from the Office of Management and Budget (OMB) a waiver of the clearinghouse review procedures required under OMB Circular A-95. However, grantees are requested to submit an information copy of their application(s) required under § 1061.52—to the appropriate clearinghouses.

#### § 1061.52-12 Limitation of project expenditures.

(a) *Limitation on payments to any eligible household.* The sum of all forms of assistance made to and/or on behalf of any eligible household during this program may not exceed \$250 in any fiscal year.

(b) *Recovery of unobligated funds.* CSA retains the authority to recover grant funds at any time sums remain uncommitted to eligible households.

(c) *Prohibition against transfer to another grant.* Funds remaining unobligated may not be transferred by the grantee to another grant.



(d) *Overexpenditures.* If the grantee incurs expenditures in excess of the total amount of the approved grant, the amount of the overexpenditure must be absorbed by the grantee.

(e) *Procurement.* In accordance with OMB Circulars A-110 and A-102 all proposed sole source contracts where only one bid or proposal is received in which the aggregate expenditure is expected to exceed \$5,000 must receive prior approval by the appropriate CSA Regional Office.

#### § 1061.52-13 Maintenance of effort.

Services provided with funds made available under this program shall be in addition to and not in substitution for services previously provided without Economic Opportunity Act assistance.

#### § 1061.52-15 Delegations of authority to Regional Directors.

This section provides for the immediate delegation to CSA Regional Directors of authority for final approval of grants under this program. When Section 601(c) was added to the Economic Opportunity Act, its last sentence prohibited the delegation of final approval of grants and contracts to any regional official after June 15, 1975. In the Economic Opportunity Amendments of 1978, this provision, which had proved to be administratively burdensome, was repealed and a requirement to promulgate rules and regulations for final approval of grants and contracts was substituted. The Community Services Administration fully intends to issue comprehensive regulations on this subject in the near future. However, in view of the fact that activities under this program will be undertaken to deal with winter-related energy emergencies, maximum efficiency in the processing of grants is immediately required. To achieve this administrative efficiency, it is necessary to return final grant-making power to Regional Directors for this program effective immediately.

#### APPENDIX A

##### COMMUNITY SERVICES ADMINISTRATION

##### CSA POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

| Size of family unit | Nonfarm family <sup>1</sup> | Farm family <sup>1</sup> |
|---------------------|-----------------------------|--------------------------|
| 1                   | \$3,925                     | \$3,303                  |
| 2                   | 5,300                       | 4,433                    |
| 3                   | 6,475                       | 5,513                    |
| 4                   | 7,750                       | 6,588                    |
| 5                   | 9,025                       | 7,663                    |
| 6                   | 10,300                      | 8,738                    |

<sup>1</sup>125%—For family units with more than 6 members, add \$1,275 for each additional member in a nonfarm family and \$1,075 for each additional member in a farm family.

##### CSA POVERTY GUIDELINES FOR ALASKA

| Size of family unit | Nonfarm family <sup>1</sup> | Farm family <sup>1</sup> |
|---------------------|-----------------------------|--------------------------|
| 1                   | \$4,925                     | \$4,225                  |
| 2                   | 6,513                       | 5,563                    |
| 3                   | 8,100                       | 6,900                    |
| 4                   | 9,687                       | 8,238                    |
| 5                   | 11,275                      | 9,575                    |
| 6                   | 12,863                      | 10,913                   |

<sup>1</sup>125%—For family units with more than 6 members, add \$1,568 for each additional member in a nonfarm family and \$1,338 for each additional member in a farm family.

##### CSA POVERTY GUIDELINES FOR HAWAII

| Size of family unit | Nonfarm family <sup>1</sup> | Farm family <sup>1</sup> |
|---------------------|-----------------------------|--------------------------|
| 1                   | \$4,925                     | \$3,913                  |
| 2                   | 5,987                       | 5,138                    |
| 3                   | 7,450                       | 6,363                    |
| 4                   | 8,913                       | 7,588                    |
| 5                   | 10,375                      | 8,813                    |
| 6                   | 11,838                      | 10,038                   |

<sup>1</sup>125%—For family units with more than 6 members, add \$1,463 for each additional member in a nonfarm family and \$1,225 for each additional member in a farm family.

##### APPENDIX B—Population-Weighted Normal Annual Heating Degree-Days by State

|                    |        |
|--------------------|--------|
| Region I (Boston): |        |
| Connecticut        | 9,130  |
| Maine              | 8,002  |
| Massachusetts      | 6,232  |
| New Hampshire      | 7,535  |
| Rhode Island       | 5,924  |
| Vermont            | 7,673  |
| Total              | 41,998 |

|                       |        |
|-----------------------|--------|
| Region II (New York): |        |
| New Jersey            | 5,470  |
| New York              | 5,899  |
| Puerto Rico           |        |
| Virgin Islands        | 0      |
| Total                 | 11,369 |

|                            |        |
|----------------------------|--------|
| Region III (Philadelphia): |        |
| Delaware                   | 4,980  |
| District of Columbia       | 4,211  |
| Maryland                   | 4,818  |
| Pennsylvania               | 5,755  |
| Virginia                   | 4,286  |
| West Virginia              | 5,108  |
| Total                      | 29,858 |

|                      |        |
|----------------------|--------|
| Region IV (Atlanta): |        |
| Alabama              | 2,695  |
| Florida              | 704    |
| Georgia              | 3,984  |
| Kentucky             | 4,414  |
| Mississippi          | 2,411  |
| North Carolina       | 3,392  |
| South Carolina       | 2,897  |
| Tennessee            | 3,801  |
| Total                | 22,798 |

|                     |        |
|---------------------|--------|
| Region V (Chicago): |        |
| Illinois            | 6,058  |
| Indiana             | 5,713  |
| Michigan            | 6,739  |
| Minnesota           | 6,730  |
| Ohio                | 5,779  |
| Wisconsin           | 7,531  |
| Total               | 40,530 |

|                                |       |
|--------------------------------|-------|
| Region VI (Dallas-Fort Worth): |       |
| Arkansas                       | 3,214 |
| Louisiana                      | 1,702 |
| New Mexico                     | 4,760 |
| Oklahoma                       | 3,508 |

##### APPENDIX B—Population-Weighted Normal Annual Heating Degree-Days by State—Continued

|                           |        |
|---------------------------|--------|
| Texas                     | 2,015  |
| Total                     | 15,205 |
| Region VII (Kansas City): |        |
| Iowa                      | 5,834  |
| Kansas                    | 4,900  |
| Missouri                  | 5,024  |
| Nebraska                  | 6,347  |
| Total                     | 22,105 |

|                       |        |
|-----------------------|--------|
| Region VIII (Denver): |        |
| Colorado              | 7,004  |
| Montana               | 8,292  |
| North Dakota          | 9,484  |
| South Dakota          | 7,681  |
| Utah                  | 6,580  |
| Wyoming               | 7,695  |
| Total                 | 46,938 |

|                            |       |
|----------------------------|-------|
| Region IX (San Francisco): |       |
| Arizona                    | 3,298 |
| California                 | 2,729 |
| Hawaii                     | 1     |
| Nevada                     | 4,370 |
| Trusts                     |       |
| Total                      | 9,398 |

|                     |        |
|---------------------|--------|
| Region X (Seattle): |        |
| Alaska              | 11,492 |
| Idaho               | 8,917  |
| Oregon              | 5,254  |
| Washington          | 5,752  |
| Total               | 29,415 |

Source: U.S. Department of Energy. Heating Degree Days is the total by which the average temperature for each day is less than 60 degrees Fahrenheit. Annual Heating Days is the sum of all Heating Degree Days during a calendar year. Normal Annual Heating Degree Days is the average Annual Heating Degree Day sum for the period 1941, as computed by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(FR Doc. 78-36215 Filed 12-27-78; 8:45 am)

[6730-01-M]

#### Title 46—Shipping

### CHAPTER IV—FEDERAL MARITIME COMMISSION

#### SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 7]

#### PART 528—SELF-POLICING SYSTEMS

##### Approval of Reporting Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: Rules for filing self-policing reports which are submitted by conferences and carriers subject to these rules are amended to reflect an extension of GAO clearance for revised General Order 7 and the reporting requirements contained therein. The amendment is necessary to comply with GAO regulations.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: 44 USC 3512 requires the General Accounting Office to review certain collections of information from 10 or more persons undertaken by independent Federal regulatory agencies.

This Commission has received clearance from the U. S. General Accounting Office for the reporting requirements contained in 46 CFR 528. Title 4 CFR, § 10.12, Notification of General Accounting Office Action, requires that notice of such clearance appear in the agency's regulations. Therefore, the following clearance statement will be placed at the end of the authority citation at the beginning of 46 CFR 528:

The reporting requirements contained in sections 528.1, 528.2 (a)-(f), 528.3(b)(3), 528.3(f), and 528.5 (b)-(e) of this Order have been approved by the U.S. General Accounting Office under number B-180233 (R0145).

Effective Date. Notice, public procedure and delayed effective date are not necessary for the promulgation of this amendment because of its nonsubstantive nature. Accordingly, this amendment shall be effective on December 28, 1978.

By the Commission.

FRANCIS C. HURNEY,  
Secretary.

(FR Doc. 78-36138 Filed 12-27-78; 8:45 am)

[6730-01-M]

#### PART 530—INTERPRETATIONS AND STATEMENTS OF POLICY

##### Adoption of Statement of Policy

AGENCY: Federal Maritime Commission.

ACTION: Adoption of statement of policy.

SUMMARY: This statement of policy announces that the application by a conference of ocean carriers or other rate-fixing body for an exemption from the self-policing requirements of 46 CFR 528.3(b) does not relieve the applicant of the obligations of those requirements pending action by the Commission on the application for exemption. The purpose and effect of this statement is to give notice that the self-policing requirements cannot be avoided by the mere filing of such an application for exemption.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L

Street, N.W., Washington, D.C. 20573, (202) 523-5725.

[6730-01-M]

[General Order 20]

#### PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

##### Approval of Reporting Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: Rules providing for the establishment of proof of financial responsibility of owners, operators, or charterers of passenger vessels are amended to reflect an extension of existing General Accounting Office clearance for the reporting requirements contained therein. The amendment is necessary to comply with GAO regulations.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: 44 U.S.C. 3512 requires the General Accounting Office to review certain collections of information from 10 or more persons undertaken by independent Federal regulatory agencies.

This Commission has received clearance from the U.S. General Accounting Office for the reporting requirements contained in 46 CFR 540 (General Order 20). Title 4 CFR, § 10.12, Notification of General Accounting Office Action, requires that notice of such clearance appear in the agency's regulations.

The clearance information is presently included in General Order 20, however, it must be amended to reflect the more specific wording of GAO's latest clearance approval. Accordingly, the clearance information language presently appearing in the note at the end of § 540.36 is hereby deleted and replaced with the following language:

The reporting requirements contained in 46 CFR 540.4(c); 540.5(a)(1) and (d); 540.9(e), (h), and (k); 540.23(c); 540.24(a)(1) and (c); and 540.27(e), (f), and (h) have been approved by the U.S. General Accounting Office under number B-180233 (R0316).

Effective Date. Notice, public procedure and delayed effective date are not necessary for the promulgation of this amendment because of its nonsubstantive nature. Accordingly, this amendment shall be effective on December 28, 1978.

SUPPLEMENTARY INFORMATION:

Pursuant to section 43 of the Shipping Act, 1916 (46 U.S.C. 841a) and the provisions of Title 5 U.S.C. 553, the Commission hereby adopts the following statement of policy by adding a new § 530.9, Exemption From Self-Policing Requirements, to Title 46 CFR reading as follows:

§ 530.9 Exemption From Self-Policing Requirements.

(a) The Commission's General Order 7, as amended September 14, 1978 (46 CFR 528), requires that as of January 1, 1979 every conference or other rate-fixing agreement between common carriers by water in the foreign or domestic offshore commerce of the United States shall contain provisions establishing and describing a system for self-policing its members, including designation of a policing authority.

(b) Section 528.3(b) of General Order 7 requires that policing authorities be headed by, and composed of, persons not otherwise employed by, having any financial interest in, or affiliated with the conference or rate-fixing body or any member or associate thereof. Provision is made in 528.3(b)(3), however, for petition to the Commission for an exemption from this "independent neutral body" requirement to allow officers or employees of the conference or rate-fixing body to act as the head of, or be assigned to duties under, the policing authority if such person or persons are not otherwise affiliated with any conference member and the conference establishes that the specific factual conditions of 46 CFR 528.3(b)(3) are present.

(c) Several conferences have filed such exemption petitions. The question has arisen whether a conference or rate-fixing body that has filed a petition for exemption is relieved of the obligation to comply with the independent neutral body requirements of section 528.3(b) pending Commission action on the petition. It is not. Unless and until the Commission grants an exemption, every conference or rate-fixing agreement must provide for the services of a policing authority that fully meets the requirements of section 528.3.

By the Commission.

FRANCIS C. HURNEY,  
Secretary.

(FR Doc. 78-36140 Filed 12-27-78; 8:45 am)



By the Commission.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-36139 Filed 12-27-78; 8:45 am]

[1505-01-M]

#### Title 49—Transportation

### CHAPTER I—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-139; Amdt. Nos. 172-49, 173-125]

#### PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

#### PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

#### Conversion of Individual Exemptions to Regulations of General Applicability

##### Correction

In FR Doc. 34368, appearing at page 57891 in the issue of Monday, December 11, 1978, on page 57893, amendatory paragraph 8, third line, "erence Note 7" should be corrected to read "erence to Note 7".

[1505-01-M]

[Docket No. HM-143; Amdt. Nos. 172-48, 173-124, 174-34, 175-8, 176-7, 177-45]

#### BLASTING AGENTS

##### Final Rules

##### Correction

In FR Doc. 78-34370 appearing at page 57897 in the issue of Monday, December 11, 1978, make the following changes:

1. On page 57902, in the third column, in 173.114a (b)(1)(vii), second line, "time" should be corrected to read "times".

2. On page 57902, in the third column, in 173.114a (b)(4)(v), second line, "trail" should be corrected to read "trial".

3. On page 57901, in the Hazardous Materials Table, in column 2 the third entry should read, "Ammonium nitrate—fuel oil mixtures see High explosive".

[4910-59-M]

#### Title 49—Transportation

### CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 77-1; Notice 3]

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

##### Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correction.

SUMMARY: This notice corrects a typographical error in the notice of the final rule published on August 31, 1978, amending Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to specify that rear side marker lamps on large trailers cannot be located higher than 60 inches above the road surface (43 FR 38832). The error appears in the heading of the final column in Table II which stated that the mounting height of rear side marker lamps above the road surface is measured with the trailer at "unit weight". The correct reference is to "curb weight".

#### FOR FURTHER INFORMATION CONTACT:

W. Marx Elliott, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 202-426-2720.

Accordingly, Title 49, Code of Federal Regulations, § 571.108 is amended to read:

TABLE III.—Location of Required Motor Vehicle Lighting Equipment

| Item | Height above road surface measured from center of item on vehicles at curb weight |
|------|-----------------------------------------------------------------------------------|
|------|-----------------------------------------------------------------------------------|

• • • • •

The lawyer and program official

principally responsible for this rule are Z. Taylor Vinson and Marx Elliott, respectively.

(Secs. 103, 112, 114, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50.)

Issued on December 20, 1978.

MICHAEL M. FINKELSTEIN,  
Associate Administrator  
for Rulemaking.

[FR Doc. 78-36179 Filed 12-27-78; 8:45 am]

[4910-58-M]

### CHAPTER VIII—NATIONAL TRANSPORTATION SAFETY BOARD

#### PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

##### Procedure for Requesting a Stay of a Petition for Review

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment revises the Board's existing procedural rules applicable to air safety proceedings to permit an individual who has petitioned the Board for review of a denial of airman medical certification to request a stay of any action on that petition when a concurrent petition for exemption from the applicable Federal Aviation Regulations (FAR) has been filed with the Federal Aviation Administration (FAA).

EFFECTIVE DATE: December 28, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Fritz L. Pula, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594, 202-472-6034.

SUPPLEMENTARY INFORMATION: This amendment is based on a notice of proposed rulemaking published in the FEDERAL REGISTER August 24, 1978 (43 FR 37732). In that proposal, the Board clarified the fact that any request for a stay of proceeding is clearly at the option of the individual who has petitioned for review of a final denial of an unlimited airman medical certificate issued by the FAA. The Board also clarified the fact that the individual petitioner could, at any time during a 180-day period from the date of issuance of the Administrator's final denial of an unlimited certificate, petition the Board for review, thereby requiring the Office of Administrative Law Judges to set in motion its procedures for the scheduling of a hearing before an administrative law judge. Fi-

nally, the Board clarified the fact that, in the event that no request is made during the 180-day period, the petitioner will be returned to the status of an applicant for airman medical certification.

Four comments were received in response to the Board's proposal. The National Pilot's Association approved the proposed rule. The Aircraft Owners and Pilots Association was opposed, stating that it does not believe that stays should be routinely granted but that the decision should be discretionary with the administrative law judge. It is the Board's view that the request for a stay or the termination of a stay at any time during the 180-day period during which petitions can be held in abeyance is properly within the discretion of the individual petitioner who, together with his physician, is in the best position to evaluate his own medical circumstances in the light of the relief available.

The Air Line Pilots Association (ALPA) supports the proposal, believing that it will provide greater flexibility to the individual airman who is denied an unlimited medical certificate to deal directly with the Federal Air Surgeon in an effort to obtain his certificate administratively, and will be of benefit to the airman, the Board, and the FAA. Moreover, ALPA believes that the Board's procedural rules can be used to request the admission of any document for good cause shown, thereby alleviating the problem of staleness of the available medical record at the time of hearing before an administrative law judge.

The FAA expressed a number of concerns with the proposal. First, the Administrator believes that he should not be required to file an answer to the petition for review in the event that a petitioner requests a stay. Since § 821.8(b) of the Board's rules of practice requires service of process on all parties to the proceeding of all documents filed with the Board, the Administrator would be required to be served with a petition for stay of proceeding. He need not prepare an answer to the petition for review until the petitioner requests that the Board proceed with the scheduling of a hearing, a copy of which will be served on him.

Second, the FAA expresses concern that a petitioner who does not request that the Office of Administrative Law Judges proceed with the scheduling of a hearing during the 180-day period is returned to the status of an applicant and must submit a new application based on a recent physical examination. We do not share that concern but believe that Board review should be based on a reasonably recent evaluation of a petitioner's medical circumstances.

The regulation is adopted as proposed; however, the clarifying language included in the preamble to the proposed rule has been incorporated into the final rule in order that the rule itself, when published in the Code of Federal Regulations, will contain all relevant data with respect to its applicability.

Accordingly, Part 821 of Title 49 of the Code of Federal Regulations is amended by adding a new § 821.24(d), to read as follows:

§ 821.24 Initiation of proceedings.

(d) *Stay of proceeding pending petition for exemption.* Where the petitioner has filed with the Administrator a petition for exemption under the provisions of the Federal Aviation Regulations, he may request that the Board hold his petition in abeyance pending final action on his petition for exemption, or for 180 days from the date of issuance of the Administrator's denial, whichever occurs first. In the event that a petitioner fails to request a hearing during the 180-day period extending from the date of issuance of the Administrator's denial, he is returned to the status of an applicant for airman medical certification and must follow the procedures set forth in 14 CFR Part 67. Pending a stay of proceedings, further pleadings are stayed.

(Title VI, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1421 et seq., and Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.))

Signed at Washington, D.C., on December 21, 1978.

JAMES B. KING,  
Chairman.

[FR Doc. 78-36117 Filed 12-27-78; 8:45 am]

[7035-01-M]

### CHAPTER X—INTERSTATE COMMERCE COMMISSION

#### SUBCHAPTER C—ACCOUNTS, RECORDS, AND REPORTS

#### PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS

[No. 36730 (Sub-No. 1)]

#### Adoption of Annual Report Form R-3 for Class III Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is adopting a new reporting form for Class III railroads. This form, Annual Report Form R-3,

will substantially reduce the reporting burden on Class III railroads.

DATES: Effective for the reporting year beginning January 1, 1978.

ADDRESSES: Send comments to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

#### FOR FURTHER INFORMATION CONTACT:

Bryan Brown, Jr., Chief, Section of Accounting, Tel. (202) 275-7448.

SUPPLEMENTARY INFORMATION: In a decision issued June 9, 1978, the Commission established a new class of rail carrier (Docket No. 36730, Designation of a Class III Railroad). Railroads with annual operating revenue (AOR) of \$10 million or less were classified Class III railroads and were relieved from maintaining the Commission's uniform system of accounts; however, these railroads were not relieved from the burden of filing Annual Report Form R-2 with the Commission. A review of the information needs of users of Class III railroads' financial and operating data indicates that many of the schedules in prior form R-2 can be deleted.

The Commission has decided to adopt a simplified report for Class III railroads, Annual Report Form R-3. Adoption of this form represents another step in the Commission's continuing effort to minimize the reporting burden of all carriers. Form R-3 contains eight schedules. All but two of the extensive property and depreciation schedules included in Form R-2 have been deleted from Form R-3. These two schedules have been included to enable the Commission to review changes in the property accounts of Class III railroads.

The Commission does not prescribe a uniform system of accounts for Class III railroads. We realize the complexity of accounting systems maintained by these railroads will vary according to available resources and management sophistication. We have designed Form R-3 in a manner consistent with basic financial reporting. The terminology, schedule formats, and instructions should ease the burden of carriers preparing and filing this report. Reducing the reporting burden of these carriers should serve the public interest and result in cost savings that should eventually be passed on to shippers and the public. The Commission recognizes that some Class III railroads may find even the preparation and filing of Form R-3 to be an extreme hardship or burden, and these railroads may seek relief from the Commission on an individual basis. Since the requirement that Class III railroads file Form R-3 is effective January 1, 1978, these railroads are re-



lieved from the present requirement that they file Form R-2 for the year ending December 31, 1978.

The Commission does not believe that this revision requires a rulemaking proceeding pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. §553). The rules involved are procedural in nature, and revisions actually lessen the reporting requirements for all Class III railroads. However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting that the public study the rule and report, at the earliest possible time, any change which needs to be made. In addition, persons who desire to study the new form may obtain a copy from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

If the Commission concludes after reviewing the comments that it is necessary to make changes in the final rule, a further notice will be published in the *FEDERAL REGISTER* on the effective date of the rule, identifying the changes made. Otherwise the new rule will take effect on that date.

This decision does not significantly affect the quality of the human environment.

Accordingly, § 1241.12, Part 1241 of Title 49 of the Code of Federal Regulations is amended as follows:

(1) The title of § 1241.12 is amended to read: Annual Reports of Class II and Class III railroad companies.

(2) Present § 1241.12 is redesignated § 1241.12(a).

(3) New § 1241.12(b) is added to read as follows:

Beginning with reports for the year ending December 31, 1978, all Class III railroads shall file Annual Report Form R-3. Two copies of the report shall be filed with the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, within 90 days of the close of the reporting period.

This reporting revision is instituted under the authority of 49 U.S.C. 12 and 20.

Decided December 11, 1978.

By the Commission. Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham and Clapp.

H. G. HOMME, Jr.,  
Secretary.

(FR Doc. 78-36198 Filed 12-27-78; 8:45 am)

[3510-22-M]

#### Title 50—Wildlife and Fisheries

### CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

#### PART 653—ATLANTIC HERRING

#### Approval of Fishery Management Plan, Emergency Regulations, and Request for Comment

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Approval of Fishery Management Plan for Atlantic Herring; emergency regulations and request for comment.

SUMMARY: The Assistant Administrator for Fisheries has approved a Fishery Management Plan (FMP) for the Atlantic herring fishery, which was prepared by the New England Fishery Management Council. Regulations implementing the FMP are promulgated on an emergency basis, because current, unrestrained harvest levels may jeopardize the Gulf of Maine herring stocks. Comments on these regulations, which are also published as proposed rulemaking, are invited.

DATES: These regulations are effective December 20, 1978 as emergency regulations, except for § 653.4, Vessel Permits, which will become effective on January 22, 1979. Public comment on the regulations may be filed until February 5, 1979.

ADDRESS: Send comments to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Mark "Herring Comments" on the outside of the envelope.

#### FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone: (617) 281-3600.

SUPPLEMENTARY INFORMATION: The Assistant Administrator approved the FMP for Atlantic herring on December 11, 1978. The New England Fishery Management Council (Council) recommended proposed regulations on October 4, 1978. These were considered and used as a basis for the regulations published here.

A. *The fishery management unit.* The herring fishery of the Northwest Atlantic Ocean is generally considered

to be dependent on three distinct stocks of fish: one associated with the Gulf of Maine, one with Georges Bank, and the other with waters off Southern Nova Scotia. All three stocks intermingle and are harvested together within the fishery conservation zone (FCZ). The FMP addresses the Gulf of Maine and Georges Bank stocks, although its regulatory measures are also applicable to herring from Nova Scotia when they are in the FCZ.

The FMP manages all herring three years of age and older which are found in the FCZ of the North Atlantic. There is a fishery for juvenile herring in the territorial waters of the State of Maine, which also takes significant numbers of adults (age three and older). However, this fishery is not included in the fishery management unit. The FMP does consider the adult harvest from the fishery, and recommends that the State of Maine's management program be consistent with that of the FMP. Harvests of juveniles and adults in this fishery are taken into account in establishing the optimum yield (OY) for the fishery in the FCZ.

Preliminary data from the 1978 summer/fall fishery, however, indicate that harvests within Maine waters may have been significantly greater than anticipated. The harvest levels may prove to have a substantial and adverse effect on implementation of the Council's management program. This situation needs further analysis in order to evaluate its impact on the FMP. The Assistant Administrator has asked the Council to assess the significance of the Maine harvest to determine if other management measures should be taken.

These regulations will not limit harvests in any State waters. Harvests from State waters other than Maine, however, will be counted toward allowable catches for the FCZ fishery, and will directly affect the need for fishery closures in the FCZ.

B. *The optimum yield model.* Both stocks directly addressed by the FMP are in need of rebuilding. The Gulf of Maine stock is in the more tenuous condition. Measures to rebuild it are central to the Council's management scheme. Those measures will indirectly have beneficial impact on the Georges Bank stock due to the intermingling of these fish.

For the fishing year covered by this FMP, the Council has determined, as its basic management approach, that the size of the Gulf of Maine spawning stock should be maintained at its present level. In order to minimize adverse impacts on the fishery as a whole, rebuilding will not start before 1980.

The Council has developed a model which considers the intermingling be-

tween the stocks and predicts the yields from each area which will meet the basic objective of maintaining the size of the Gulf of Maine spawning stock. The model itself, coupled with this basic objective, is the core of the OY analysis.

Based upon certain assumptions, the FMP estimates the OY's for this fishery in 1978-1979 as 8,000 metric tons for the Gulf of Maine, and 10,000 metric tons from Georges Bank and South. (Because of intermingling, the allowable harvest from the Gulf of Maine is larger than the desired removals, 7,000 metric tons, from the Gulf of Maine spawning stock.) However, if it appears during the fishing season that harvests should be adjusted from area to area, based upon the model's analysis, the FMP provides that the Assistant Administrator should do so without an amendment of the OY estimates specified in the FMP. Such adjustments may be based upon an updated stock assessment, or upon an overharvest or underharvest in one or both of the areas. The adjustments may increase or decrease the allowable catch for a given area or season, but are not expected to change the quotas by more than 15 percent.

The model indicates that, given current stock assessments, maintenance of the Gulf of Maine spawning stock requires that harvest from the State of Maine waters be similar to those of recent years, and that harvests from that stock in the FCZ be limited to 7,000 metric tons. This harvest represents a cutback in the domestic fishery. A lesser harvest is judged by the Council to have unacceptable socioeconomic effects. A greater harvest will have unacceptable biological impacts.

C. *Conservation and management measures.* The FMP establishes a fishing year, from July 1 to June 30. The summer/fall fishery runs from July 1 to November 30 (five months), and the winter/spring fishery runs from December 1 to June 30 (seven months).

One of the conservation and management measures set forth in the FMP is the establishment of two management areas; one for the Gulf of Maine and one for Georges Bank and South. These are described in the definition section of the regulations. Fishing in these areas is interrelated. For example, the small winter/spring quota in the Georges Bank and South area is the result of large numbers of fish from the Gulf of Maine spawning stock intermingling with fish from the Georges Bank spawning stock in that area at that time.

The principal conservation and management measures established by the FMP are quotas by area and season as follows:

Gulf of Maine:  
July to November 1978—4,000 mt

December 1978 to June 1979—4,000 mt  
Georges Bank and South:  
July to November 1978—7,500 mt  
December 1978 to June 1979—2,500 mt

As discussed above, the FMP provides an adjustment procedure so that, in specified circumstances, allowable catches may be adjusted upward or downward in-season without requiring a change in the FMP. The "stock assessments" which would justify such action are semi-formal conclusions reached by scientific research personnel of NOAA in consultation with other scientific personnel, including the staffs of the affected Regional Fishery Management Councils. In the past, these assessments have been structured, critical reviews of recent data and other scientific information.

The FMP determines that the greatest overall benefit from the fishery may be achieved if the pattern of domestic fishing is changed. Traditionally, there have been two domestic fisheries for herring: one in the summer and fall, which is dominated by purse seine vessels, and one in the winter and spring, which is dominated by pair trawl vessels. Catches in these two fisheries over the past two years have been approximately equal. The FMP would shift effort in the Gulf of Maine away from the fall purse seine fishery so that the relationship between the winter/spring and summer/fall fisheries would shift from 50:50 to 70:30. However, requiring this shift immediately would impose undue hardships, so the relationship is continued at 50:50 for 1978-79. This analysis will be reevaluated by the Council in updating the FMP next year.

The FMP also requires statistical reporting and vessel permits. Every vessel which either catches or is likely to catch any Atlantic herring is required to have a permit.

Domestic fishermen are not permitted to discard any Atlantic herring. Foreign vessels are permitted to discard herring in order to allow them to catch their allocation of other species; herring continues to be a "prohibited species" for foreign vessels. Spawning closures and size restrictions were considered by the Council, but determined not to be necessary at this time.

The quota management system of the FMP is implemented in these regulations by providing for closures once the specified quota levels for each management area have been harvested. During a closure, a small incidental take of 5 percent is allowed in most fisheries. It is believed that herring are not taken in very large amounts in other fisheries. The exception is the mackerel fishery, where significant amounts of herring may be taken incidentally. Therefore, a special incidental allowance of 20 percent is provided for the mackerel fishery.

All closures will be accomplished by means of field orders. The regulations provide that the Regional Director must notify all permit holders by mail before a field order may take effect.

The Executive Directors of the New England and Mid-Atlantic Fishery Management Councils will be notified before issuance of a field order. This will insure that interested Council members receive timely notification of pending actions.

Under these regulations, most of the administrative decisions are to be made by the Assistant Administrator for Fisheries, NOAA. The Regional Director, National Marine Fisheries Service, will ultimately have this authority. However, an appropriate delegation of authority must be secured first. When these regulations are promulgated as final, it is expected that the field orders will be issued by the Regional Director.

When adjustments are made to quotas, an opportunity for notice and public comment is provided consistent with the requirements of the Administrative Procedures Act, 5 U.S.C. section 553. In circumstances where this opportunity must be waived, these regulations provide for an alternate public comment period of 15 days after the effective date of the field order. The Assistant Administrator must then reconsider the need for the action in light of any comments which might have been received during that period.

Because of the dynamics of fisheries management, it is often necessary to make these decisions quickly and without normal opportunity for notice and comment, since untimely decisions would not be effective in managing the fishery. NOAA has recognized both the need to make these decisions on a timely basis and the need to provide opportunity for notice and comment. We believe that this approach provides the best method for balancing these considerations and serving the public interest as a whole.

The FMP is specified by the Council to be effective through the current fishing year ending June 30, 1979. At that time the FMP must be amended to be effective for subsequent fishing years.

These regulations are effective immediately as emergency regulations. The Assistant Administrator has found, under section 305(e) of the Fishery Conservation and Management Act of 1976, that "an emergency involving . . . fishery resources exists." Harvests of adult herring in the Gulf of Maine summer/fall fishery have significantly exceeded the levels determined in the FMP to be optimal. The FCZ harvest is expected to exceed the 4,000 mt level by about 15 percent. The harvest in Maine territorial



waters may be double the expected amount. Because the capacity of vessels in the winter/spring fishery could result in harvest of the 4,000 mt quota in two or three weeks, and because the winter/spring harvest is usually concentrated in December and January, immediate implementation of the FMP is essential to prevent the Gulf of Maine quota from being exceeded and the spawning stock from dropping below the critical minimum level.

**NOTE.**—The emergency in the herring fishery makes it unnecessary, impractical, and contrary to the public interest to withhold action to obtain further public comment. Public comment is invited, however, on these emergency regulations as proposed rulemaking.

**NOTE.**—The final environmental impact statement covering the FMP was filed September 18, 1978, with the Environmental Protection Agency.

(16 U.S.C. 1801 et seq.)

Signed in Washington, D.C., this 19th day of December 1978.

JACK W. GEHRINGER,  
Deputy Assistant  
Administrator for Fisheries.

## PART 653—ADULT ATLANTIC HERRING FISHERY

### Subpart A—General Provisions

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  - 653.3 Relation to other laws [Reserved].
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### Subpart B—Management Measures

- 653.20 Fishing year.
- 653.21 Seasonal catch quotas.
- 653.22 Closures.
- 653.23 Adjustments to seasonal quotas.
- 653.24 Field orders.
- 653.25 Discard prohibitions.
- 653.26 Spawning closures [Reserved].
- 653.27 Size restrictions [Reserved].

AUTHORITY: 16 U.S.C. 1801 et seq.

### Subpart A—General Provisions

#### § 653.1 Purpose and scope.

The regulations in this Part govern the Atlantic herring fishery conducted by fishing vessels of the United States within that portion of the Gulf of Maine and Georges Bank and South areas over which the United States exercises exclusive fishery management authority. These regulations implement the Atlantic Herring Fishery Management Plan, which was prepared and developed by the New England Fishery Management Council and approved by the Assistant Administrator.

#### § 653.2 Definitions.

In addition to the definitions in the Act, the terms used in this Part shall have the following meanings:

**Act** means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801-1882.

**Assistant Administrator** means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

**Atlantic herring, or herring,** means *Clupea harengus harengus*, three years of age and older.

**Authorized Officer** means:

- (1) any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) any certified enforcement officer or special agent of the National Marine Fisheries Service;
- (3) any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the provisions of the Act; or
- (4) any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

**Discard** means to throw away, cast back, or return to the sea any fish that has been caught. The removal and release of a live fish before that fish is brought on board a vessel is not a discard. Failure to retain any live fish once it is on board a vessel, or failure to retain any dead fish, is a discard.

**Fishery Conservation Zone (FCZ)** means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

**Fishery Management Plan (FMP)** means the Fishery Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic, and any amendments thereto.

**Fishing** includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

- (1) The catching, taking, or harvesting of fish;
- (2) The attempted catching, taking, or harvesting of fish;
- (3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2) or (3) of this definition.

**Fishing Vessel** means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) fishing for Atlantic herring, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing for Atlantic herring, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

**Fishing week** means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

**Georges Bank and South** means that management area consisting of the territorial and offshore waters of the coastal states of the United States, south of 42°20' N. latitude, excluding Cape Cod Bay.

**Gulf of Maine** means that management area consisting of a portion of the Northwestern Atlantic Ocean north of 42°20' N. latitude, exclusive of the territorial waters of the State of Maine, plus that area south of 42°20' N. latitude which is west of 70°00' W. longitude and which is bounded on the south by the northern shore of Cape Cod, including the waters of Cape Cod Bay.

**Operator**, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

**Owner**, with respect to any vessel, means:

- (1) Any person who owns that vessel in whole or in part;
- (2) Any charterer of the vessel, whether bareboat, time or voyage;
- (3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or
- (4) Any agent designated as such by a person described in paragraphs (1), (2), or (3) of this definition.

**Person** means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

**Regional Director** means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, Telephone (617) 281-3600, or a designee.

**Vessel Fishing for Mackerel** means any fishing vessel whose catch on board at any time is 75% mackerel (*Scomber scombrus*).

#### § 653.3 Relation to other laws. [Reserved]

#### § 653.4 Vessel permits and fees.

(a) **General.** Every fishing vessel must have a permit issued under this Part.

(b) **Eligibility.** [Reserved]

(c) **Application.** (1) An application for a permit under this Part must be submitted and signed by the owner of the vessel on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all of the following information:

- (i) The name, mailing address, and telephone number of the applicant;
- (ii) The name of the vessel;
- (iii) The vessel's United States Coast Guard documentation number or State registration number;
- (iv) The home port and gross tonnage of the vessel;
- (v) The engine horsepower of the vessel;
- (vi) The approximate fish hold capacity of the vessel;
- (vii) The type and quantity of fishing gear used by the vessel; and
- (viii) The average size of the crew, which may be stated in terms of a normal range.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the applicant within 15 days of any such change.

(d) **Issuance.** The Regional Director shall issue a permit to the applicant within 30 days of the receipt of a completed application.

(e) **Expiration.** A permit shall expire when ownership, name of the vessel, or gross tonnage changes.

(f) **Duration.** A permit shall continue in full force and effect until it expires or is revoked, superseded, or modified pursuant to Part 621 of this Chapter.

(g) **Alteration.** No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(h) **Replacement.** Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(i) **Transfer.** Permits issued under this Part are not transferable or assignable. A permit shall be valid only for the fishing vessel for which it is issued.

(j) **Inspection.** Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit shall be presented for inspection upon request of any Authorized Officer.

(k) **Revocation.** Subpart D of Part 621 of this Chapter (Civil Procedures) shall govern the imposition of sanctions against a permit issued under this Part. As specified in that subpart D, a permit may be revoked, modified, or suspended if the permit vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act and pertaining to a permit is not paid.

(l) **Fees.** No fee shall be required for any permit issued under this Part.

#### § 653.5 Recordkeeping and reporting requirements

(a) **Fishing vessel records.** (1) The owner or operator of a fishing vessel shall:

- (i) Maintain an accurate and complete fishing logbook on forms supplied by the Regional Director, recording all fishing;
- (ii) Make the fishing logbook available for inspection at any time during or after a trip by an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections;
- (iii) Keep the fishing logbook for one year after the date of the last entry in the logbook; and
- (iv) Submit fishing logbook reports as specified in paragraph (a)(2) of this section.

(2) The owner or operator of a fishing vessel shall submit a complete fishing logbook report to the Regional Director, within 48 hours of the end of the fishing week or trip, whichever is the longer time period.

(3) The Assistant Administrator may revoke, modify, or suspend the permit of any vessel whose owner or operator falsifies or fails to submit the records and reports described in this section, in accordance with the provisions of Part 621 of this Chapter (Civil Procedures).

(b) **Transfers and purchases.** Any person who receives herring for a commercial purpose from a fishing vessel shall:

- (1) File a report with the Regional Director on forms supplied by him, within 48 hours of the end of the fishing week in which such receipt took place. Such report shall include information on all transfers and purchases of herring made by him during that fishing week; and
- (2) Permit any Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any records or books relating to any such purchase or transfer.

#### § 653.6 Vessel identification.

(a) **Official number.** Each fishing vessel over 25 feet (7.62 m) in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the Coast Guard or the registration of number issued by a State or the Coast Guard for undocumented vessels.

(b) **Numerals.** The Official Number shall be at least 18 inches (45.72 cm) in height for fishing vessels of 65 feet (19.8 m) in length and at least 10 inches in height (25.4 cm) for all other vessels over 25 feet (7.62 m) in length, and shall be painted legibly in block Arabic numerals in contrasting color.

(c) **Vessel length.** The length of a vessel, for purposes of this section, shall be that length set forth in Coast Guard or State records.

(d) **Duties of operator.** The operator of each fishing vessel shall:

- (1) Keep the Official Number clearly legible and in good repair; and
- (2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

#### § 653.7 Prohibitions.

It is unlawful for any person to:

- (a) Fish for, take, catch, harvest, or land any Atlantic herring in an area closed pursuant to section 653.24 of this Part;
- (b) Discard Atlantic herring at sea;
- (c) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic herring unless said vessel has a valid permit issued pursuant to this Part, and such permit is on board such vessel;
- (d) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;
- (e) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this Part;
- (f) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale or transfer of any herring;
- (g) Refuse to permit an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any logbooks or records relating to the taking, catching, harvesting, landing, purchase or sale of any herring;
- (h) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export or land any Atlantic herring taken in violation of



the Act, this Part, or any regulation promulgated under the Act;

(i) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any regulation promulgated under the Act;

(j) Fail to affix and maintain permanent markings as required by section 653.6 of this Part;

(k) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(l) Resist a lawful arrest for any act prohibited by this Part;

(m) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part;

(n) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(o) Fail to comply immediately with enforcement and boarding procedures specified in section 653.8 of this Part;

(p) Violate any other provision of this Part, the Act, or any regulation promulgated pursuant thereto.

#### § 653.8 Enforcement.

(a) *General.* The operator of any fishing vessel shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals or other communications conveying enforcement instructions. [The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by section 653.6]

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to insure the safety of the Authorized Officer and his/her party to facilitate the boarding.

#### § 653.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and Parts 620 (Citations) and 621 (Civil Procedures) of this Chapter.

#### Subpart B—Management Measures

##### § 653.20 Fishing year.

The fishing year for Atlantic herring begins on July 1 and ends on June 30 of the following year.

##### § 653.21 Seasonal catch quotas.

(a) *Gulf of Maine.* Quotas limiting the amount of Atlantic herring which may be caught in the Gulf of Maine management area during the following two periods of the fishing year are:

(1) For the period from July 1, 1978, through November 30, 1978, 4,000 metric tons; and

(2) For the period from December 1, 1978, through June 30, 1979, 4,000 metric tons.

(b) *Georges Bank and South.* Quotas limiting the amount of Atlantic herring which may be caught in the Georges Bank and South management area during the following two periods of the fishing year are:

(1) For the period from July 1, 1978, through November 30, 1978, 7,500 metric tons; and

(2) For the period from December 1, 1978, through June 30, 1979, 2,500 metric tons.

##### § 653.22 Closures.

(a) *Closures.* The Assistant Administrator shall project, at least once a month, a date when the quota of herring for each management area, less an anticipated amount to be taken incidentally pursuant to paragraph (c) of this section, will be caught. If the projected date is earlier than the end of the period, the Assistant Administrator shall issue a field order prohibiting fishing for herring in the applicable management area after the projected date.

(b) *Prohibitions.* Fishing for Atlantic herring in the applicable management area is prohibited from the effective date of a field order issued pursuant to section 653.24, except as provided in paragraph (c) of this section.

(c) *Incidental catch.* (1) Fishing vessels may fish in an area closed pursuant to this section for fish other than

herring and be allowed an incidental catch of herring of not more than 5 percent of the total catch on board.

(2) Vessels fishing for mackerel in an area closed pursuant to this section shall be allowed an incidental catch of Atlantic herring of not more than 20 percent of the total catch on board.

##### § 653.23 Adjustments to seasonal quotas.

(a) *Adjustments.* The Assistant Administrator shall monitor fishing levels for and stock sizes of herring. If he finds that the Gulf of Maine spawning stock is not being maintained at approximately 67,600 metric tons, the Assistant Administrator may adjust the quotas in section 653.21.

(b) *Considerations.* In making any adjustment under paragraph (a) of this section, the Assistant Administrator shall consider:

(1) The effect of fishing levels within the management areas;

(2) The catch per unit of effort and rate of harvest of herring within the management areas;

(3) Relative abundance and distribution of herring stocks within the management areas;

(4) The condition of the herring stocks within the management areas;

(5) Fishing levels and abundance of herring stocks in waters outside the management areas; and

(6) Any other relevant information.

(c) *Procedure.* (1) The Assistant Administrator shall publish proposed adjustments to the quotas in the FEDERAL REGISTER for public comment before they are made final, unless the Assistant Administrator finds for good cause that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(2) If the Assistant Administrator decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, comments on the necessity for, and the extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. During any 15-day comment period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the adjustment was based.

(3) If comments are received during any comment period, the Assistant Administrator shall reconsider the necessity for and the extent of the adjustment. As soon as practicable after that reconsideration, he shall either (i) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, with a response to comments received; or (ii) modify or rescind the adjustment.

(4) *Consultation and notice.* The Assistant Administrator shall give notice of adjustments to the quotas by issu-

ance of a field order in accordance with section 653.24 of this Part.

#### § 653.24 Field orders.

(a) *Contents.* Field Orders issued by the Assistant Administrator under this Part shall include the following information:

(1) A description of the management area which is the subject of the closure or quota adjustment;

(2) The effective date and any termination date of the closure or quota adjustment; and

(3) The reason for the closure or quota adjustment.

(b) *Consultation.* Prior to issuance of any field order, the Regional Director shall notify the Executive Directors of the New England and Mid-Atlantic Fishery Management Councils.

(c) *Effective date.* No field order issued under this section shall be effective until:

(1) It is filed for publication with the FEDERAL REGISTER; and

(2) It has been posted for at least 48 hours prior to its effective date, and sent by mail to all persons holding permits issued under section 653.4.

(d) *Termination.* Orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(1) Any expiration date stated in the field order; or

(2) The effective date of any order which modifies, rescinds, or supercedes the initial order.

#### § 653.25 Discard prohibitions.

There shall be no discarding of Atlantic herring at sea by fishing vessels.

#### § 653.26 Spawning closures [Reserved]

#### § 653.27 Size restrictions [Reserved]

#### FISHERY MANAGEMENT PLAN FOR THE ATLANTIC HERRING FISHERY OF THE NORTHWESTERN ATLANTIC

#### PREPARED BY NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL

#### ATLANTIC HERRING FISHERY MANAGEMENT PLAN

#### PART I

#### STATEMENT OF THE PROBLEM

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#### Appendix 3—Biological Model for Determining Area/Period TAC, Technical Description

#### 1. Statement of the Problem

#### 1.1. The Management Unit and Its Institutional Framework

#### 1.1.1. Preface

#### The United States has declared management authority over the stocks of herring that are endemic to an area designated as a Fisheries Conservation Zone (FCZ). The zone has as its inner boundary the seaward limit of the territorial waters of the coastal states and as its outer boundary a line parallel to, and 200 nautical miles from, the baseline from which the territorial seas are measured. This authority was established on March 1, 1977 by Pub. L. 94-265, the Fishery Conservation and Management Act (FCMA). Under the FCMA, the United States assumes sole responsibility for the pursuit of scientific research, the establishment of management plans and policies, and the enforcement of the provisions of such plans and policies. These activities must be conducted, for the fishery resources within the FCZ, in a manner that will provide the greatest overall benefit to the nation from the resources.

#### Pursuant to the FCMA, stocks of herring beyond the territorial seas will be managed by the U.S. Department of Commerce according to objectives, policies and proposed regulations established by the New England Regional Fishery Management Council. These policies and regulations are developed in an Atlantic Herring Fishery Management Plan (FMP) and are used to provide an "optimum yield" from the fishery. The "optimum yield" is based on the best available scientific data; it is sensitive to the potential for overfishing and it incorporates considerations of biological, social, economic, and environmental factors in determining the greatest overall benefit from the herring fishery. The FMP also establishes the expected domestic catch of herring, and in doing so it defines the surplus production



available for the foreign nationals to harvest. Once in place, the FMP becomes the vehicle by which the Department of Commerce regulates the Atlantic herring fishery within the FCZ.

#### 1.1.2. The Management Unit

The fishery resources addressed by this FMP are the herring stocks which spawn in and are generally restricted to the waters off the U.S. northeast and mid-Atlantic coasts out to the limit of the U.S. Fishery Conservation Zone. The two resource components identified are the Gulf of Maine and the Georges Bank herring stocks. A third resource component, the Southwest Nova Scotia adult herring stock demonstrates some seasonal migrations into the U.S. Fishery Conservation Zone. As such, it enters into the analysis required to identify U.S. management strategies. It is, however, not made subject to the provisions of this FMP.

In delineating the management units within the total resource, it is necessary to acknowledge two provisions of the FCMA. The national standards for fishery conservation and management specify that:

"To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." (Sec. 301(a)(3)).

The FCMA asserts also that:

"Except as provided in subsection (b) nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries." (Section 306(a)).

The juvenile herring of the Gulf of Maine (fish aged one to three) are largely confined to areas within 3 miles off the State of Maine coastline. Three year old herring, however, migrate to a degree and become available to the adult fisheries both inside and outside the three mile zone. During any given year fish aged 3 and older belonging to Gulf of Maine stock may become subject to fishing in waters over which the States of Maine, New Hampshire, Massachusetts and Rhode Island have management authority as well as in the U.S. Fishery Conservation Zone outside state boundaries. A similar situation exists with respect to the Georges Bank herring stock whereby herring during certain seasonal migration phases appear in the territorial waters off the States of Rhode Island, Connecticut and New York.

In order to meet the need for coordinated management of the herring resources while at the same time recognizing the management authorities of the states, it is recommended that:

1. the provisions of this FMP through appropriate institutional arrangements be made applicable to all herring fisheries from the shore lines of the New England and Mid-Atlantic States out to the limit of the U.S. Fishery Conservation Zone with the exception of the fisheries for juvenile herring in the territorial waters of the State of Maine; and that

2. the management provisions be specified based on the presumption that the State of Maine in the management of the fisheries for juvenile herring carefully considers the bio-economic interaction between the juvenile and adult components of the Gulf of Maine herring stock and through appropriate measures (1) seeks to contribute towards the achievement of management objective and (2) conducts the herring fishery within 3 miles in a manner that does not impede the achievement of the Council's objective 1.

It is recognized that management authority over the Georges Bank herring resources is an issue currently being contested between the U.S. and Canada. It is not within the purview of this FMP to establish management authority. Rather this FMP is generated under a scenario which assumes that the Georges Bank herring stock will be retained under U.S. management jurisdiction.

#### 1.2. A Descriptive Summary of Resources and Industry

##### 1.2.1. Descriptive Summary of the Resource

The sea herring of the western North Atlantic is a pelagic, schooling species which is confined to the continental shelf waters from Labrador to Cape Hatteras. Herring populations coming under the jurisdiction of the FCMA, if only briefly during the course of their seasonal migrations, include the Georges Bank, Gulf of Maine and southwest Nova Scotia stocks.

Very high catches of herring (ages 3 and older) were taken during the late 1960's and early 1970's by the distant water fleets, principally northern European trawlers, in the continental shelf waters from Georges Bank to Cape Hatteras. Allocations to those foreign fleets were sharply curtailed in 1976 and 1977 and since then the pattern of the

remaining fishing effort, that of the U.S. and Canada, has been centered in the Gulf of Maine/southern New England and the southwestern Nova Scotia/Bay of Fundy regions, with the largest catches made by the Canadians in the latter region.

In addition, a sardine fishery, that predates the adult fishery, has harvested juvenile herring (ages 1 to 3) in coastal waters of Maine and the Bay of Fundy, and has traditionally employed fixed gear (stop seines and weirs) to take a major portion of the catch.

It is generally understood that the Georges Bank, Gulf of Maine and Southwest Nova Scotia stocks are separate reproductive entities associated with well defined, specific spawning areas but are not isolated genetically from one another. Therefore, management must use stock specific criteria when considering objectives and strategies. The migratory movement of adult herring, however, has complicated attempts to manage on a stock specific basis. A realization has only recently emerged that at various times of the year fish from all three stocks may be expected to geographically overlap in varying proportions and become seasonally subject to capture in the various commercial fisheries.

Details regarding the current knowledge of herring migration behavior are provided to the reader in Appendix 1. In addition, specific information relating to the biology of sea herring in the region off the northeast United States is presented in Appendix 1, detailing life history, ecological relationships, population dynamics and habitat requirements.

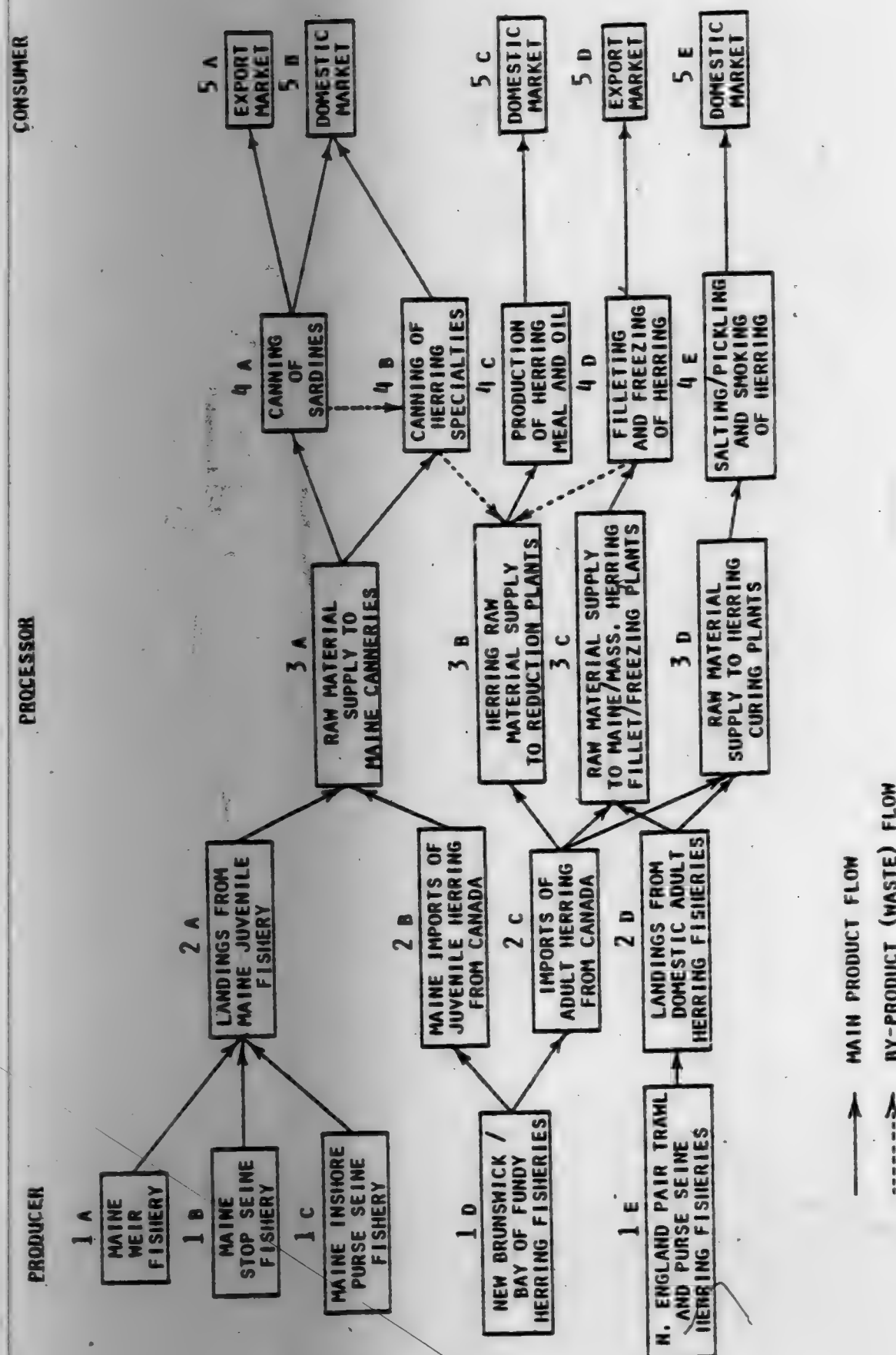
##### 1.2.2. Industry Structure and Performance

The structure of the domestic industry that depends partly on the herring resources available off the U.S. northeast coast and partly on imports at various market levels is shown schematically in Figure 1.2.2.A. This product flow diagram illustrates the major linkages between various sectors in the industry.

Any attempt to manage the herring fisheries in the region (Blocks 1A-1C, 1E in Fig. 1.2.2.A.) through catch limitations or otherwise will to some extent affect the landings supply of herring (Blocks 2A and 2D). As such, it will impact on the welfare of and the distribution of welfare between the primary user groups (i.e. the fishermen and owners of fishing vessels).

[3510-22-C]

Figure 1.2.2.A. Schematic overview of current product flows in the New England/Mid-Atlantic herring industry.





Changes in landings supply brought about by resources management measures will, however, also impact on the supply of raw material available to various secondary producers (i.e. processing groups, Blocks 3A-D). In consequence the net economic results derived by these user groups from the herring resources will be affected.

Through adjustments in the production of herring products (Blocks 4A-E) induced by the changes in the availability of raw material, the impacts of management regulations reach the domestic consumer level (Block 5B) and foreign user groups (Block 5D).

As quantities change at the various markets levels, prices will adjust. As a result net economic benefits to various industry user groups at successive market levels become affected by management measures. Proper prediction of such changes requires knowledge of the structure and performance of the markets on which the domestic and foreign user groups interact. It also is dependent on knowledge of the behavior of various user groups in response to prices observed on these markets.

A detailed study of the industry structure and its performance was undertaken. The detailed results of this study are documented in Appendix 2: "Harvesting and Resources Utilization". A statistical summary of major activity or performance indicators are shown below (Table 1.2.2.A.).

### 1.3. Perceived Management Problems

The problems of management of the herring resources to be subjected to the provisions of this FMP fall in the following three general categories:

(a) The current conditions of the herring stocks, the market induced pressures for expanded harvests and the economic need of the New England fishing community.

(b) The complexity of the institutional framework within which the resources have to be managed.

(c) Uncertainty relative to the future values of biological and economic parameters required for an appropriate analysis of impacts of alternative strategies.

Various aspects of these problems are dealt with in detail throughout this FMP. They are briefly summarized below:

(a) The current low biomass of herring in the Gulf of Maine and on Georges Bank call for management aimed at rebuilding of stocks. This need requires reconciliation with current pressure for increased harvests of the Gulf of Maine herring stock which is induced by the current and expected marketing prospects in Europe for frozen herring.

[3510-22-C]

Table 1.2.2.A.

Historical Activity and Performance Indicators in the New England Herring Industry and the U.S. Herring Market

| Activity/Performance Indicator                     | Annual<br>Average 1972-76 | 1976          |
|----------------------------------------------------|---------------------------|---------------|
| <b>1. Harvesting Sector</b>                        |                           |               |
| <b>1.1. Catch Volume (1000 tons)</b>               |                           |               |
| 5Y, 1 & 2 year olds; area 1 <sup>1/</sup>          | 11.9                      | 13.7          |
| 5Y, 3 y+ <sup>2/</sup> area 1                      | 8.3                       | 16.5          |
| 5Y, 3 y+, area 2 <sup>1/</sup>                     | 14.0                      | 19.2          |
| 5Y, 3 y+ total                                     | 22.3                      | 35.7          |
| 5Z & SA6, 3 y+                                     | 3.2                       | .7            |
| 5Y, 5Z & SA6, 3 y+                                 | 25.5                      | 36.4          |
| <b>1.2. Catch Value (mill. \$)</b>                 |                           |               |
| 5Y, 1 & 2 year olds, area 1                        | 1.0                       | 1.31          |
| 5Y, 3 y+, area 1                                   | .7                        | 1.6           |
| 5Y, 3 y+, area 2                                   | .9                        | 1.4           |
| 5Y, 3 y+, total                                    | 1.7                       | 3.0           |
| 5Z, 3 y+                                           | .2                        | .05           |
| 5Y & 5Z, 3 y+                                      | 1.9                       | 3.1           |
| <b>1.3. Effort No. of Gear</b>                     |                           |               |
| 5Y, area 1 weirs                                   | 29                        | 27            |
| stop seines                                        | 49                        | 65            |
| purse seines                                       | n.a.                      | (12-15)       |
| 5Y, area 2 purse seines                            | n.a.                      | 9             |
| & 5Z pair trawlers                                 | n.a.                      | 18            |
| otter trawlers                                     | n.a.                      | 6             |
| <b>1.4. Effort, Days Absent</b>                    |                           |               |
| 5Y area 1 & 5Z purse seines total                  | n.a.                      | 247           |
| per vessel                                         | n.a.                      | 25            |
| pair trawlers total                                | n.a.                      | 320           |
| per vessel                                         | n.a.                      | 17            |
| otter trawls total                                 | n.a.                      | 48            |
| per vessel                                         | n.a.                      | 6             |
| <b>1.5. Gross Earnings From Herring Fishing</b>    |                           |               |
| Per Gear/Vessel (1000 \$)                          |                           |               |
| weirs (5Y, area 1)                                 | 5.8                       | 6.7           |
| stop seines (5Y, area 1)                           | 16.0                      | 34.8          |
| purse seines (5Y, area 2 & 5Z)                     | n.a.                      | 84.0          |
| otter trawls (5Y, area 2 & 5Z)                     | n.a.                      | 1.0           |
| <b>1.6. Net Income to Vessel/Gear (1000 \$,</b>    |                           |               |
| Gross stock less variable costs)                   |                           |               |
| purse seines, total                                | n.a.                      | 224.5         |
| per vessel                                         | n.a.                      | 22.4          |
| pair trawls, total                                 | n.a.                      | 241.6         |
| per vessel                                         | n.a.                      | 13.4          |
| otter trawls, total                                | n.a.                      | 1.2           |
| per vessel                                         | n.a.                      | .2            |
| <b>1.7. Employment (no. of persons per vessel)</b> |                           |               |
| weir-stop seine fishery (5Y, area 1)               | 273                       | 345           |
| purse seine (5Y, area 2)                           | n.a.                      | (60-75 est.)  |
| pair trawls & purse seines (5Y, area 2 & 5Z)       | n.a.                      | 145           |
| man days absent while herring fishing              | n.a.                      | 3,000 (appr.) |



## 1.8 Labor Income from herring fishing (\$)

|                                               |      |        |
|-----------------------------------------------|------|--------|
| purse sein fishery (5Y area 2 & 5Z),<br>total | n.a. | 72,000 |
| pair trawl fishery (5Y area 2 & 5Z),<br>total | n.a. | 51,000 |

## 2. Processing Sector

## 2.1. Output, Quantity (1000 Mt product wt.)

|                                 |      |      |
|---------------------------------|------|------|
| Total                           | 28.4 | 30.6 |
| 2.1.1. For: Human Consumption   | 23.9 | 26.3 |
| Sardines                        | 12.3 | 11.8 |
| Steaks & Tidbits                | 1.8  | 3.0  |
| Filletts (incl. H & G)          | 5.3  | 7.9  |
| Other                           | 4.5  | 4.1  |
| 2.1.2. For: Industrial Purposes | 4.5  | 4.3  |
| Meal                            | 3.4  | 3.4  |
| Oil                             | 1.0  | .9   |
| Pearl Essence                   | 1.05 | .039 |

## 2.2. Output, Value (mill. \$)

|                                 |      |      |
|---------------------------------|------|------|
| Total                           | 41.4 | 53.4 |
| 2.2.1. For: Human Consumption   | 37.1 | 48.2 |
| Sardines                        | 22.1 | 24.5 |
| Steaks & Tidbits                | 2.8  | 6.5  |
| Filletts (incl. H & G)          | 2.6  | 4.3  |
| Other                           | 9.7  | 13.0 |
| 2.2.2. For: Industrial Purposes | 4.3  | 5.2  |
| Meal                            | 1.3  | 1.4  |
| Oil                             | .3   | .3   |
| Pearl Essence                   | 2.7  | 3.4  |

## 2.3. Number of Plants

|                                 |                    |                  |
|---------------------------------|--------------------|------------------|
| Total                           | 34.2 <sup>3/</sup> | 33 <sup>3/</sup> |
| 2.3.1. For: Human Consumption   | 29.2 <sup>3/</sup> | 28 <sup>3/</sup> |
| Sardines                        | 16.2               | 16               |
| Steaks & Tidbits                | 10.2               | 12               |
| Filletts (incl. H & G)          | 3.2                | 5                |
| Other                           | 12.4               | 10               |
| 2.3.2. For: Industrial Purposes | 5 <sup>3/</sup>    | 5 <sup>3/</sup>  |
| Meal                            | 2.0                | 2                |
| Oil                             | 2.0                | 3                |
| Pearl Essence                   | 3.4                | 3                |

2.4. Employment - Total Man Months  
(per plant in parentheses) <sup>4/</sup>

|                               | 1975                       | 1976                       |
|-------------------------------|----------------------------|----------------------------|
| Total                         | 23,460 (733) <sup>3/</sup> | 23,941 (725) <sup>3/</sup> |
| 2.4.1. For: Human Consumption | 21,142 (783) <sup>3/</sup> | 21,550 (770) <sup>3/</sup> |
| Sardines                      | 14,516 (968)               | 15,256 (954)               |
| Steaks & Tidbits              | 12,497 (1041)              | 12,807 (1067)              |
| Filletts (incl. H & G)        | 2,650 (663)                | 3,311 (662)                |
| Other                         | 5,352 (535)                | 5,267 (527)                |
| 2.4.2. For: Industrial Use    | 2,318 (464) <sup>3/</sup>  | 2,391 (478) <sup>3/</sup>  |
| Meal                          | 1,850 (295)                | 1,891 (946)                |
| Oil                           | 909 (455)                  | 2,232 (744)                |
| Pearl Essence                 | 701 (234)                  | 744 (248)                  |

## 3. Consumption

Annual  
Average 1972-76

1976

|                                                                       |       |      |
|-----------------------------------------------------------------------|-------|------|
| 3.1 Apparent Consumption of<br>Canned Sardines (1000 MT)              | 34.2  | 29.0 |
| 3.2 Retail Prices for Canned<br>Sardines (cents per 3 3/4 oz.<br>can) | 37.54 | 52.9 |

4. Imports & Exports <sup>5/</sup>

|                                      |                 |      |      |
|--------------------------------------|-----------------|------|------|
| 4.1 Imports, total                   | V               | 51.3 | 63.3 |
| from Canada                          | V               | 15.2 | 20.6 |
| from other countries                 | V               | 36.1 | 42.8 |
| 4.1.1. Fresh-Frozen<br>(from Canada) | Q               | 35.2 | 26.1 |
|                                      | V               | 2.7  | 2.5  |
| 4.1.2. Canned Sardines               | Q <sup>6/</sup> | 25.2 | 24.4 |
|                                      | V               | 33.1 | 40.5 |
| 4.1.3. Other                         | Q               | 17.0 | 20.6 |
| (smoked & Cured)                     | V               | 15.4 | 20.3 |

## 4.2. Exports

|                                         |                 |     |      |
|-----------------------------------------|-----------------|-----|------|
| 4.2.1 Frozen herring to<br>West Germany | Q               | 5.8 | 10.6 |
|                                         | V               | 2.6 | 4.9  |
| 4.2.2. Canned Sardines                  | Q <sup>6/</sup> | 0.9 | 0.8  |
|                                         | V               | 1.4 | 1.6  |

1/ Area 1 refers to inside 3 miles off State of Maine, Area 2 is defined as the entire 5Y less Area 1.

2/ Includes herring of age 3 years and above.

3/ Totals are exclusive of duplication.

4/ Some plants, especially those in the meal and oil, and other food sectors, have a small percent of total value of production due to herring; thus a small percent of their employment is due to herring.

5/ Q = 1,000 MT product weight  
V = 1,000,000 \$

6/ Includes weight of containers.

Sources: (1) United States Department of Commerce, Current Fishery Statistics Series.  
(2) NMFS, Unpublished data.  
(3) NERFMC, Unpublished data - vessel performance.  
(4) Maine Department of Marine Resources, Unpublished data.  
(5) BRD Statistisches Bundesamt Aussenhandel, Reihe 2, Spezialhandel nach waren und Landen, 1954-74.



(b) Ideally, management of fishery resources that cross the geographical boundaries separating the management jurisdictions of U.S. Government, the Canadian government, and the individual States would be most effective under a single overall management plan endorsed by all parties. Realistically, one overall management plan is not feasible at this time, therefore, a minimum requirement for effective management is that the separate management plans promulgated by the various entities be closely coordinated.

(c) The management regulations to be implemented from this FMP will impact on future resource abundance and availability, as well as on the stream of future benefits that user-groups at various levels will derive from these resources. In developing this FMP, these impacts need to be considered. The reliability of our assessments of such future impacts depends on the accuracy with which we can predict the biological and economic parameters that characterize our decision environment. Our current predictive ability is however limited. In particular, it is important to provide for an improved understanding of both the functional relationship between parental stocks and subsequent recruitment, and the relationship between year class strength and key environmental variables.

#### 1.4. Management Objectives

In recognition of the above the Council has established that the management of the Atlantic herring shall have the following two objectives:

(1) To manage the Gulf of Maine and Georges Bank/S.N.E. adult sea herring stocks so as to achieve individual biomass levels at which continued and relatively stable annual recruitment is probable allowing for annual rates of stock increases that are consistent with:

a. the provision that spawning stocks in all areas are maintained at or above current levels of abundance; and with

b. reasonable social and economic impacts on the various industry and consumer user groups including those user groups dependent upon the Gulf of Maine juvenile herring fishery.

(2) To manage the Gulf of Maine juvenile herring stock so as to stabilize and subsequently rebuild the sardine industry.

Consistent with the discussion in Section 1.1.2, this FMP does not attempt to design strategies directly aimed at objective 2.

#### 1.5. Approach to Determination of "Optimum Yield" and Associated Management Measures

The FCMA requires each FMP to specify an overall annual catch limitation (TAC) and a total foreign allowable catch. These two management instruments coupled with one or more additional regulatory measures, the use of which are left by the Act to the discretion of the Councils, constitute a management strategy. The "optimum yield" (OY) in this general context is identical to the particular TAC included in the selected strategy.

The selection of a particular management strategy should be based on the evaluation of intertemporal, as well as intratemporal consequences of strategies. These dimensions are discussed below.

##### 1.5.1. The Intertemporal Dimension of Determining a Management Strategy

The biological, social and economic consequences of determining overall catch limitations for the 1978 herring fisheries in the

two management areas extend into the future. A decision to abstain from or restrict harvesting a resource today is an investment decision. Like other investment decisions, it requires determination of an expected return within some defined planning period. In the herring fishery, biological parameters as well as current and future prices and costs determine return on investment. Direct and indirect effects on employment are likely to be additional considerations relevant to an assessment of a social return on rebuilding of herring stocks. In order to evaluate the economic and social impacts of strategies designed to achieve various annual rates of stock recovery, it becomes necessary to predict future streams of net benefits and costs associated with individual strategies. These future streams of net benefits and costs in turn are impacted by the particular sets of management regulations enforced in future years. Management strategies, therefore, have to be viewed as encompassing a time span longer than one year. It follows that annual "optimum yields" have to be determined for multiple years, rather than a single year, recognizing that future "optimum yields" will have to be revised as our perception of the biological and economic decision environment improves, and as our objectives for management change.

The selection of a management strategy in the Atlantic herring fishery is therefore equivalent to finding the optimum intertemporal distribution of benefits to the nation. Part 2 of this FMP offers an analytical base for making a choice.

##### 1.5.2. The Intratemporal Dimension of Determining a Management Strategy

A continuous theme throughout the development of this FMP is the significance of the spatial and seasonal distribution of annual allowable harvests. The significance of these distributions has two interrelated aspects. First, the annual allowable harvests that provide for specific annual rates of stock recovery are themselves functions of the spatial and seasonal catch distributions. Second, these distributions impact on the allocation of benefits to individual user groups. In determining both "optimum yield" for a given year, as well as in determining the allocations of this OY by area and season, the intratemporal distribution of benefits to various user groups need to be assessed. Section 2.6. of the analytical part of this FMP provides a base for identifying options and making a choice.

#### FINAL

### ATLANTIC HERRING FISHERY MANAGEMENT PLAN

#### PART 2

### IDENTIFICATION OF STRATEGIES AND IMPACT ANALYSIS

#### 2. Identification of Strategies and Impact Analysis

##### 2.1. Introduction

The FCMA specifies the management instruments available to the Council for design of strategies to achieve the adopted management objectives. These are:

- (1) An overall annual catch limitation in the fishery (TAC), Sec. 303(a)(3).
- (2) Total foreign allowable catch; Sec. 303(a)(4)(B).
- (3) Designation of fishing zones and fishing periods, Sec. 303(b)(2).

(4) Catch limitations by area, species, season, size, etc., Sec. 303(b)(3).

(5) Gear/vessel specifications, Sec. 303(b)(4).

(6) Permits/fees, Sec. 303(b)(1).

(7) Access limitation, Sec. 303(b)(6).

(8) Other regulatory measures, Sec. 303(b)(7).

The FCMA requires that each FMP includes specification of the first two instruments. The use of the remaining six instruments is left to the discretion of the Council. This Plan shall therefore, as a minimum, include an overall catch limitation (TAC) and a total foreign allowable catch in the Atlantic herring fishery.

A management strategy is a particular combination of two or more management instruments where certain values/conditions have been assigned to the instruments.

Given the nature of the herring resource, the management problems as perceived and the management objectives as adopted, the formulation and evaluation of alternative management strategies need to address two major issues/decision areas. They are (a) the timing and annual rate of progress in the stock rebuilding program, and (b) the spatial and seasonal distribution of a given annual allowable harvest:

##### (a) The Timing and Annual Rate of Progress in the Stock Rebuilding Programs

A decision to rebuild a depressed fish stock is fundamentally an investment decision. Real investment and the restoration of fish resources are related efforts, require similar sacrifices or costs and play similar roles in the general economic process. Both look to the provision of future satisfactions that would not be obtainable without some present sacrifice. Both involve a transfer of consumption from present to future; therefore both, to be rational decisions, require a comparison of present sacrifice with expected future satisfaction. Either investment or rebuilding of fish stocks increases net satisfactions if the transfer of some consumption from present to future necessitates a present sacrifice which is smaller than the value that presently is attached to the expected increase in future satisfactions.

Having established that the objectives for management of the Atlantic herring resources include stock restoration, the Council's decision is one of choosing between alternative investment projections, i.e. stock restoration strategies.

Each may be characterized, among other things, through its time horizon and time path of resource utilization. In the case at hand, restoration strategies may differ with respect to the particular future time periods in which the desired stock levels of the two herring resources will be reached. The time paths of harvesting leading up to such future time periods may vary between strategies. There is therefore an infinite number of rebuilding strategies that theoretically could be considered by the Council.

The process of identifying a large number of individual management strategies and assessing their economic impacts in order to find the "best" strategy can be lengthy and difficult. The usefulness of pursuing this avenue is limited by our ability to effectively discriminate between individual strategies based on their predicted impacts (on stock size) in future time periods. Recognition of this limitation is the primary reason for restricting the number of alternative stock rebuilding programs considered.

##### (b) The Spatial and Seasonal Distribution of Annual Allowable Harvests

Herring aggregations available to U.S. fishermen in the Fishery Conservation Zone are composed of more than one spawning stock. Seasonal migrations of the different stocks in the U.S. and Canadian waters result in variations throughout the year in stock intermingling ratios in any given area. As a result the allowable levels of harvest by area are partially functions of the seasonal distribution of catches.

Simultaneously, seasonal allocations/quotas by area impact on the allocation of benefits to various user groups primarily through the accessibility of the resources to various gear types during spawning and overwintering periods. The nature of these relationships need to be explored so as to arrive at feasible options for area/period TACs and assessments of their impacts on total benefit from the fishery and its distribution between user groups.

##### 2.2. Summary of Analysis

The biological and economic analysis in support of the herring FMP development is summarized below:

##### (a) With respect to the timing and annual rate of progress in the stock rebuilding program:

(1) Based on initial assessments of the biological consequences of leaving the 5Y adult herring fishery unregulated, the option of the Council taking no action to restrict 5Y adult herring catch below the levels of recent years was ruled out as a management strategy to be consistent with the adopted management objectives.

(2) Four alternative stock restoration strategies were identified ( $S_1$ ,  $S_2$ ,  $S_3$ ,  $S_4$ ). Stock rebuilding is initiated in 1978 under  $S_1$ , in 1979, under  $S_2$ , etc. Each of these strategies specified annual TACs for the adult herring fishery in 5Y over a ten year period. For each strategy, expected domestic catches (EDCs) in the 5Z/SA6 area were indicated. These EDCs and the annual goals of rate of rebuilding of the Georges Bank stock together determine the total annual foreign allowable herring catches in the 5Z/SA6 area.

(3) The returns to the harvesting sector, value of processing, labor income and aggregate regional income were used as benefit criteria. The present value method was applied to discriminate between strategies. Under the assumptions made, results showed  $S_1$  to be preferable to  $S_2$ , which in turn was preferable to  $S_3$ , etc. One implication is that delays in initiation of stock rebuilding imply foregone benefits.

(4) Because of the expected domestic catch of adult herring in 5Y during the first six months of unregulated fishing in 1978, the option of implementing  $S_1$  has already passed. Therefore  $S_2$ , i.e. initiation of 5Y stock restoration in 1979, is the recommended strategy. This strategy limits the annual TAC of adult herring in 5Y outside State of Maine waters to 1,000 tons during the period 1979-1983.

##### (b) With respect to the spatial and seasonal distribution of annual allowable harvests:

(1) The analytical model for generating area TACs, consistent with given spawning stock recovery goals, was applied to examine the impacts of a series of alternative seasonal distributions of the annual catch of adult herring in 5Y (outside State of Maine waters) on the magnitude of the annual harvest that would provide for zero percent

growth in the Gulf of Maine spawning stock.

(2) Although the total removals from the Gulf of Maine spawning stock remain the same, various seasonal distributions of harvest in 5Y will effect the total allowable catch; a seasonal harvest that favors winter/spring will result in an increase in the total allowable catch because fishing mortality is concentrated on mixed stocks, but a seasonal harvest that favors the fall will minimize the total allowable catch because the fishing mortality is concentrated on the indigenous stock. It must be pointed out, however, that the historical participation of various gear types in the 5Y adult herring fishery may be altered by the application of various seasonal catch distributions and resulting TAC's.

(3) If herring are not available to the adult fishery in certain areas and periods because of unanticipated behavioral patterns, accommodation may be made within the analytical mode to adjust area/period TAC's without changing the level of total removals from the Gulf of Maine spawning stock. In general, if herring are more or less available in 5Y relative to 5ZW during the winter/spring period, allowable catch may be shifted between the two areas according to specific assumptions of the distribution model. The various options considered for the 5Y area/period TAC's are based on limited removals that allow for the maintenance of the Gulf of Maine spawning stock biomass, but not its increase. If some stock rebuilding were desired in the Gulf of Maine for the fishing year 1978/79, it would be necessary to reduce the suggested quotas for both the fall and winter/spring periods.

(4) The annual catch of herring within the juvenile fishery of the State of Maine has traditionally included some age 3 and older herring. It is consistent with effective management of the herring resources that the State of Maine take appropriate measures to manage the age 3+ herring resource within its State waters in a manner which will not impede the achievement of the Council's management objectives.

(5) The quota for the 5Z fall fishery is quite flexible. It has been assumed that the 5Z/SA6 spawning stock can sustain a harvest of 20,000 MT and still increase its abundance up to the minimum desirable spawning stock size. So long as the 5Z harvest is taken during the fall period, the 5Y spawning stock is not expected to be negatively impacted, and considerable accommodation can be made in 5Z for the traditional 5Y fall fishery interests.

(6) An evaluation of the gross revenue implications to the harvesting sector and its subgroups was made. The sensitivity of the distribution of gross revenues by major gear groups, purse seines and pair trawls to alternative seasonal 5Y TACs was tested.

(7) Changes in gross revenues from herring fishing to major gear groups for 1978/79 were predicted under alternative area/period TAC options and an assumed requirement of zero annual growth in the 5Y spawning stock. Substantial reductions in gross revenues compared to recent years are predicted unless compensatory income from the summer-fall herring fishing on Georges Bank is forthcoming.

(8) The conditional gross revenue forecast suggest that a policy of maximizing gross benefits to the harvesting sector within some stock growth constraint can only be pursued at the expense of reduced gross

earnings to purse seiners. A numerical evaluation of this trade off was shown.

##### 2.3. Biological Analysis of the Resource

##### 2.3.1. Stock Abundance and Present Condition

2.3.1.1. *Gulf of Maine Adult Herring Stock*  
In coming year classes to the adult fishery in the Gulf of Maine do not fully recruit until the age of 7. As a result, the impact of year class strength may be felt for many years as the particular age group passes through the fishery. Since 1973, the 1970 year class has been dominant in catches from the adult herring fishery (age 3+). The size of this year class at age 3 has been estimated to be 64,200 metric tons (NOAA/NMFS June 1977 assessment) and as such reflects the largest recruiting year class abundance in the history of the fishery. The previous dominant year class occurred in 1966 and was calculated (1974 ICNAF Redbook, p. 42) to be 32,300 MT at age 3.

Year classes prior to 1970 can be expected to contribute only slightly to catches from the 5Y adult fishery in 1978. As a result, relative year class strengths since 1970 can be expected to influence projections of stock growth and acceptable levels of catch. Previous assessments of the 1971 year class assumed that the abundance at age 3 (1974 ICNAF Redbook) was equivalent in size to the relatively poor 1969 year class at age 3 (73 million fish, 8,800 MT). Current assessments indicate that the abundance of the 1971 year class was 5% larger (9,400 MT, age 3) then the 1969 year class. The 1972 year class has been assumed equal to the 1971 year class since 1975 (1975 ICNAF Redbook, p. 46) based upon catches in the Maine juvenile fishery and the poor catches in the Gulf of Maine adult fishery.

While 1975 catch data from the Maine juvenile fishery indicated that the 1973 year class was no more abundant than the 1972 year class, 111.4 million herring were taken from the Maine juvenile fishery in 1976, the largest age 3 catch since 1969. This year class has, therefore, been assumed to vary in size at age 3 from 64 million (equal to the 1969 year class) to 150 million fish (by convention equivalent to one half the 1966 year class age 3 level of abundance, 1975 ICNAF Redbook, p. 46). For 1977 and 1978 it is assumed that this 1973 year class is equal to one half the 1966 year class size.

The abundant catch of the 1974 year class as 2 year olds in the Maine juvenile fishery (310 million fish) suggested a year class strength equivalent to the 1966 year class (32,300 MT). The previous assessments, that the 1974 year class was equal to the poor 1969 year class (9,000 MT), were assumptions based on very limited data and no longer appear to be valid. Information on the size of the 1975 year class is available from larval surveys and age 1 (1976) and 2 (1977) catches in the Maine juvenile fishery. For the purposes of the current assessment, this year class is assumed equal to the 1969 year class at age 3.

Assessment of the Gulf of Maine spawning stock (age 4 and older) for the beginning of 1976 indicated an abundance of 60,600 MT (ICNAF Redbook, 1976, p. 35-50). The latter assessment predicted that the 1976 catch of 20,000 MT in the Gulf of Maine would result in a stock decrease to 43,000 MT at the beginning of 1977. Due to changes in the recruitment assumptions for year classes 1973 and 1974 noted above, it now appears that the stock size only decreased to 52,800 MT at the beginning of 1977.



Catches reported to date for the 5Y adult herring fishery indicate that the expected catch for 1977 will approximate 20,000 MT. Assuming this level of catch for 1977 and the revised 1973, 1974 year class strengths,

the stock at the beginning of 1978 is projected to be 67,600 MT (a 28% increase over the year). Table 2.3.1. summarizes the assumptions of spawning stock size and recruitment used in the current assessment.

Table 2.3.1.

## Gulf of Maine (5Y) Adult Herring Fishery:

## Summary of Stock and Recruitment Assumptions

| Year | Stock Size<br>(age 4+)<br>beginning of year<br>(MT) | Recruitment<br>at age 3<br>(MT) | Year Class<br>Represented |
|------|-----------------------------------------------------|---------------------------------|---------------------------|
| 1969 | 140,900                                             | 32,000                          | 1966                      |
| 1970 | 130,800                                             | 18,300                          | 1967                      |
| 1971 | 100,900                                             | 14,000                          | 1968                      |
| 1972 | 66,200                                              | 8,800                           | 1969                      |
| 1973 | 31,100                                              | 64,200                          | 1970                      |
| 1974 | 40,100                                              | 9,400                           | 1971                      |
| 1975 | 80,700                                              | 9,300                           | 1972                      |
| 1976 | 60,600                                              | 16,000                          | 1973                      |
| 1977 | 52,800 <sup>1/</sup>                                | 32,300                          | 1974                      |
| 1978 | 67,600 <sup>2/</sup>                                | 8,800 <sup>3/</sup>             | 1975                      |

<sup>1/</sup> Based upon revised estimates of 1973, 1974 year classes (see text).

<sup>2/</sup> Assumes 20,000 MT catch for 1977 in 5Y.

<sup>3/</sup> Pending further data, the 1975 year class is assumed to be equal to the relatively poor 1969 year class at age 3.

## 2.3.1.2. Georges Bank Adult Herring Stock

Recruitment into the Georges Bank fishery is more rapid than into the Gulf of Maine fishery, such that an incoming year class is fully recruited by age 5. As a result, the impact of variations in year class strength can be expected to be manifested earlier on Georges Bank than in the Gulf of Maine. Because the analytical technique used to assess year class strength and fishing mortality rate (cohort analysis) is most accurate under conditions of increasing exploitation, the diminishing catches resulting from restrictive ICNAP quotas have in recent years provided a less accurate basis for determination of the 1971-1974 year class strengths on Georges Bank. In recent years there has been a high level of correlation for year class strengths as determined from corresponding analyses of the Georges Bank and Gulf of Maine adult fisheries. Therefore, the same assumptions as to year class strength have been applied to both fisheries.

Previous assessments indicated that the 1973 and 1974 year classes were equivalent

in size to the 1969 year class. Based upon the strength of these year classes in the Maine juvenile fishery, however, stock estimates were revised upward to 109,000 and 219,000 MT respectively. With low catches in 1976, the projected stock size (age 4+) at the beginning of 1977 has been given at 270,000 MT. If, as has been assumed in previous assessments, the catch from 5Z/SA6 had been 28,000 MT, the stock (age 4+) would have been expected to increase to 456,000 MT at the beginning of 1978. It should be noted that catches of herring from 5Z/SA6 in 1977 were less than 500 MT for domestic vessels and about the same for foreign vessels. As a result, it is not possible to adequately monitor the age distribution of the exploitable stock, and thus the recruitment of 1973 and 1974 year class fish cannot be assessed. In the current assessment the estimated 1973 and 1974 year classes make up 73 percent by weight of the stock size in the 5Z/SA6 fishery. Given that the above revisions of the 1973 and 1974 year classes are incorrect and those year classes are in fact equivalent to the 1969 year class, then the stock size at the begin-

ning of 1978 will be 319,000 MT, assuming a 1977 catch of 1,000 MT. The assessment is thus critically dependent upon the assumptions concerning the 1973 and 1974 year classes. The unexpectedly low levels of catch taken by foreign vessels in the designated 1977 fishing window may indicate an overestimation of the 1973, 1974 year class abundance recruiting to the Georges Bank fishery. The absence of these year classes, however, may as well be related to these herring not attaining sexual maturity. Oceanographic conditions may also have effected a change in behavioral patterns resulting in diminishing stock abundances in traditional pre-spawning fishing areas. However, survey cruises conducted by NOAA/NMFS indicate a general diminished abundance over all of Georges Bank and, thus, it seems prudent to assume an overall low stock abundance. As a result, analysis presented here assumes a conservative 1978 stock level of 199,000 MT in 5Z/SA6. A stock size of this level suggests in addition that the already poor 1971 and 1972 year classes may in fact be less abundant than anticipated.

Table 2.3.2.

Georges Bank (5Z/SA6) Adult Herring Fishery  
Summary of Stock and Recruitment Assumptions

| Year | Stock Size<br>(age 4+)<br>beginning of year<br>(MT) | Recruitment<br>at age 3<br>(MT) | Year Class<br>Represented |
|------|-----------------------------------------------------|---------------------------------|---------------------------|
| 1963 | 270,000                                             | 525,000                         | 1960                      |
| 1964 | 705,000                                             | 430,000                         | 1961                      |
| 1965 | 980,000                                             | 210,000                         | 1962                      |
| 1966 | 1,105,000                                           | 240,000                         | 1963                      |
| 1967 | 1,140,000                                           | 180,000                         | 1964                      |
| 1968 | 1,025,000                                           | 200,000                         | 1965                      |
| 1969 | 760,000                                             | 219,000                         | 1966                      |
| 1970 | 600,000                                             | 135,000                         | 1967                      |
| 1971 | 450,000                                             | 95,000                          | 1968                      |
| 1972 | 245,000                                             | 85,000                          | 1969                      |
| 1973 | 140,000                                             | 437,000                         | 1970                      |
| 1974 | 340,000                                             | 85,000                          | 1971                      |
| 1975 | 279,000                                             | 85,000                          | 1972                      |
| 1976 | 209,000                                             | 109,000 (85,000) <sup>1/</sup>  | 1973                      |
| 1977 | 270,000 (245,000) <sup>3/</sup>                     | 219,000 (85,000) <sup>2/</sup>  | 1974                      |
| 1978 | 484,700 (319,700) <sup>4/</sup>                     | 85,000                          | 1975                      |

<sup>1/</sup> Revised estimate of 1973 year class strength up from preliminary value (in parentheses).

<sup>2/</sup> Revised estimate of 1974 year class strength up from preliminary value (in parentheses).

<sup>3/</sup> Estimate value of stock (age 4+) abundance given two assumptions of 1973 year class abundance.

<sup>4/</sup> Estimate value of stock (age 4+) abundance given revised estimates of 1973 and 1974 year classes. Value in parentheses is the estimate appropriate to the conservative (85,000 MT) 1973, 1974 year class estimates. A catch of 1,000 MT is assumed for this stock in 1977.



### 2.3.1.3. Other Fisheries Impacting Upon Management Unit

Historically the assessments which have been generated for the Gulf of Maine spawning stock have not explicitly addressed the juvenile fishery along the coast of Maine. Rather, in establishing allowable catches for the 5Y adult fishery (principally through ICNAF) the analysis has determined year class strengths recruiting to that fishery at age 3. As a result, fishing mortality induced in the juvenile fishery has already been implicitly discounted.

In the past the juvenile fishery has principally been conducted using fixed gear, which tends to provide yield in relation to abundance (environmentally induced variations in availability assumed average), thus producing a constant rate of fishing mortality. Where the fishery is exploited using movable gear (i.e., purse seine), the possibility exists for fishing mortality to increase substantially on a given year class, particularly when the juvenile herring are relatively less available to the fixed gear. In the latter case, the juvenile fishery is able to take increased advantage of a given year class, thus impeding the achievement of objective 1, to rebuild and sustain at optimum levels the size of the Gulf of Maine spawning stock. Where it is no longer possible to assume constant fishing mortality on a given year class in the juvenile fishery, the validity of the adult fishery analysis may be impaired without explicitly considering the activity in the juvenile fishery. Moreover, in order that the entire resource may be managed equitably, controls on fishing mortality by juvenile fishery purse seiners may be indicated.

The sea herring resource off the northeastern United States is migratory; subpopulations range from Chedabucto Bay to Cape Hatteras. As such, management measures specified for the area under U.S. jurisdiction will impact upon stocks located outside the jurisdictional area which may migrate seasonally into U.S. waters. Of principal interest is the southwest Nova Scotia stock which is believed to intermix with Gulf of Maine and Georges Bank stocks on a limited seasonal basis such that it is subject to catch by domestic vessels. Similarly fish stocks under U.S. jurisdiction are believed to be seasonally subject to Canadian exploitation. Data made available through joint discussions between U.S. and Canadian assessment scientists (October 1977) indicate that the southwest Nova Scotia stock (age 4+) is presently assessed to be 363,000 metric tons. Recent assessments of recruiting year class size for this stock (1973-1974 year classes) are not currently available.

### 2.3.2. Stock Assessment and Optimality

#### 2.3.2.1. Overview of Analytical Concepts

Two measures of fishing mortality ( $F$ ) have been identified as reference points for the purpose of establishing a biological basis for fisheries management.  $F_{max}$  refers to the exploitation rate at which the maximum yield may be derived (pounds landed) for each individual (recruit) while it is in the fishery (i.e., subject to being caught by the gear in use). It is a function of the growth and natural mortality processes within the fish stock, as well as the age (or size) at which a fish becomes subject to the gear.  $F_{max}$  is formulated independent of recruitment, and as such, does not provide an absolute estimate of expected yield. An understanding of  $F_{max}$  relating to a maximum expected yield per recruit, can lead to an esti-

mation of allowable catch, given a knowledge of the magnitude of year to year recruitment. The value in maximizing yield per recruit is that the fishery extracts the maximum yield from whatever overall abundance may be available at the time. Naturally, the higher the abundance the greater the absolute catch.

$F_{max}$  refers to the fishing mortality rate at which the average long-term catch from a stock is at a maximum level, and is a function of the total production process within the stock, including recruitment.  $F_{max}$  and  $F_{0.1}$  may be found to correspond in those situations where the average level of recruitment does not change directly in response to changes in stock abundance. The concept of MSY is difficult to define and its value cannot be precisely estimated for many reasons. Moreover, the usefulness of the concept for non-equilibrium fish populations and in situations requiring relatively short-term management decisions is unclear. As a result,  $F_{max}$  may have only limited applicability.

The form of the relationship between yield per recruit and fishing mortality differs for various fish stocks according to their growth and natural mortality characteristics. For herring, the level of fishing mortality which corresponds to the maximum yield per recruit ( $F_{max}$ ) occurs at a relatively high level and may not be precisely identified. Because  $F_{max}$  does not consider the magnitude of annual recruitment, management measures based upon this reference point alone do not guarantee the maintenance of the spawning stock at a level that would insure either an optimum level of total yield or optimum average recruitment. Moreover, where the relationship between yield per recruit and fishing mortality has no clearly defined maximum or, if present, occurs at a relatively high fishing mortality level, the setting of TACs for catch regulation at the  $F_{max}$  level may lead to reductions in both stock size and the number of age groups in the exploited stock, large short-term changes in allowable catch and possible recruitment failure due to critically low spawning stock levels.

The principal element governing the adequacy of  $F_{max}$  as a reference point in management is the recruitment process, both with respect to environmentally induced variability and the nature of the stock/recruitment relationship. Since little is known about the latter with respect to sea herring, some evaluation has to be made on a qualitative basis using all available information on the size and composition of the stock, historic variations in recruitment to the stock, and the stock's relationship to other components of the exploited ecosystem. Where adverse consequences of setting a fishing mortality rate too high are possible, given the inadequacy of  $F_{max}$ , a more restrictive management system would be justified. For example, the biological management tools might include 1) fixing the fishing mortality rate in the exploited phase at a level somewhat lower than  $F_{max}$ , and 2) setting a minimum spawning stock size.

For fish stocks such as herring, a fishing mortality rate lower than  $F_{max}$  can be set which would result in only a small loss in average yield, but would achieve a substantially higher average stock biomass, greater stock stability due to the presence of a larger number of age groups in the exploitable stock, and higher average catch per unit effort. The  $F_{0.1}$  level (defined as the

level at which the change in yield per recruit with respect to mortality rate is one-tenth of that corresponding to the fishery beginning on the virgin stock) has been specified as a possible reference point below  $F_{max}$ .  $F_{0.1}$  is suggested as having the merits described above, although it will not necessarily serve to achieve desired stability in stock size and recruitment.

The establishment of a minimum spawning stock size constraint coupled with an optimum stock size goal, serves to minimize the risks of stock depletion and recruitment failure, and thus should be part of the scientific evaluation leading to advice on specific management strategies. While our lack of knowledge on stock/recruitment relationships limits us in pin-pointing minimum stock constraints, historical data permits the establishment of stock levels below which the danger of recruitment failure is indicated.

### 2.3.2.2. Gulf of Maine Adult Fishery—Beverton-Holt Yield Per Recruit

Anthony (1972) developed growth equations for eastern and western Maine herring which are consistent with a gradient of progressively faster growing fish characteristic of areas from Nova Scotia to Georges Bank. Conversely, the maximum size attained by the oldest fish is greatest in the Nova Scotia stock. Consistent with Anthony's observation that the Western Maine herring growth equation is intermediate between that for Nova Scotia and Georges Bank herring and because major catches of area 5Y adult herring have historically occurred in western Gulf of Maine waters, it has been taken to be descriptive of growth of adult herring in the 5Y fishery.

Figure 2.3.1. reflects the yield per recruit curve for 5Y herring which is based on the growth equation:

$$L_t = 34.64 (1 - e^{-0.1(t-0.25)})$$

and an estimate of the largest weight of a fish in the stock,  $W_{\infty} = 335.65$  gm. In the above expression,  $L_t$  is the length of a fish in centimeters at age  $t$ . Characteristic of fish having a slow rate of post-recruit growth and fairly high natural mortality, the curve has no apparent maximum. Therefore,  $F_{max}$  probably cannot be defined. The  $F_{0.1}$  level, the point where the net addition to the total catch achieved by one unit of effort is one tenth of that in the virgin fishery, is at  $F_{0.1} = 0.34$ . It is clear that exerting additional fishing effort beyond the  $F_{0.1}$  level does not result in substantial increase in long-term catches but would result in a rapid decline in catch per unit of effort.

### Gulf of Maine Adult Fishery—Maximum Equilibrium Yield

Herring stocks in the northwest Atlantic exhibit extreme fluctuations in the level of annual recruitment. A review of Table 2.3.1. demonstrates that in terms of biomass at age 3, year class strengths have varied in recent years by as much as a factor of 7. This variation is perhaps most obvious for the strengths (at age 3) of the 1969 through 1971 year classes, estimated to be 8,800; 64,200 and 9,400 metric tons respectively. Given that the Beverton-Holt yield per recruit curve shown in Figure 2.3.1. does not apparently reach a maximum value, and that recruitment to the stock fluctuates widely in magnitude, it is clear that maximum sustainable yield may not be readily defined.

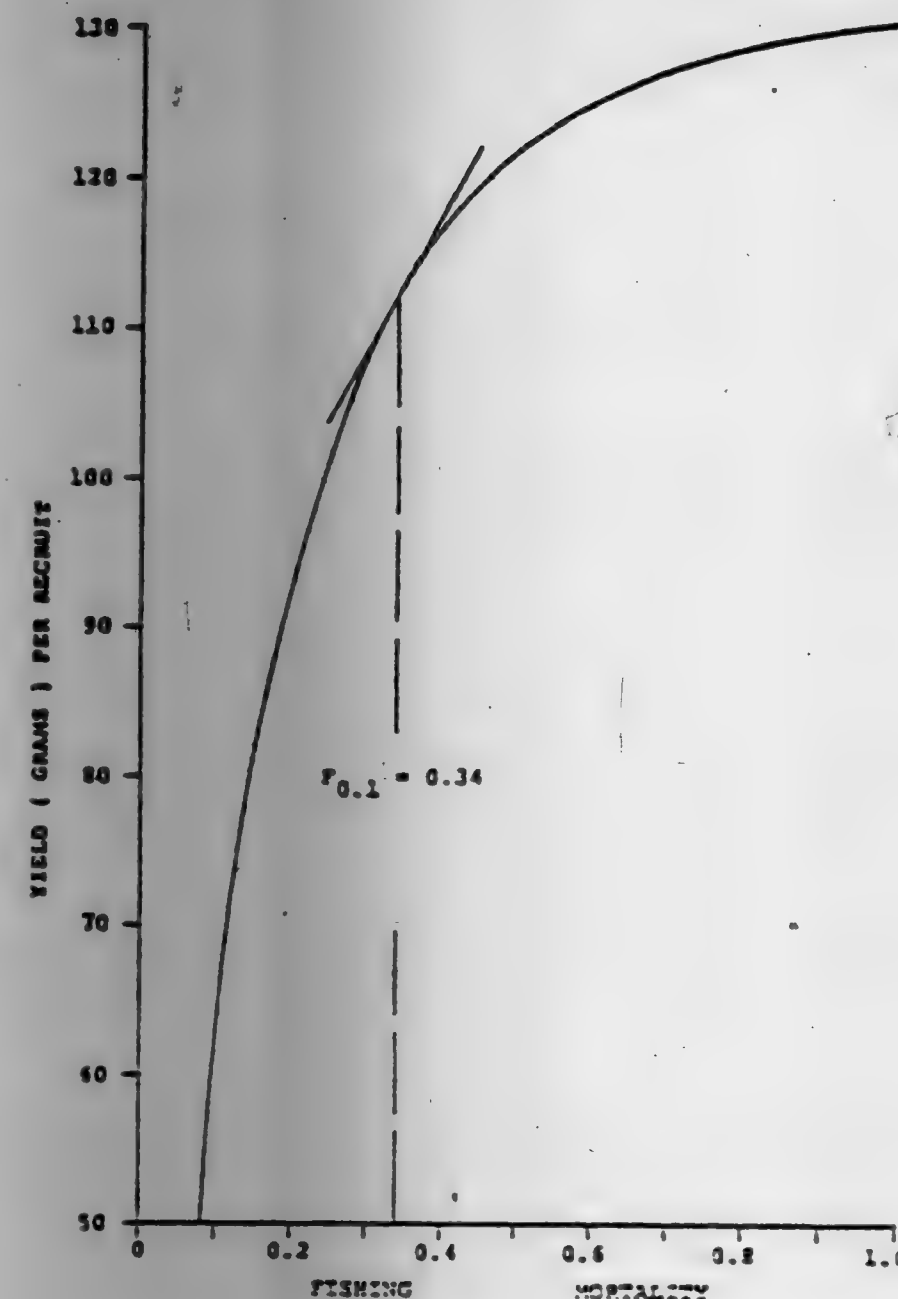


Figure 2.3.1. Beverton-Holt yield per recruit curve for Gulf of Maine herring.



Understanding the severe limitation which is imposed on long-term management decision making by the inability to estimate or define sustainable yield for herring, it is, nevertheless possible to derive an estimate of the maximum equilibrium yield based upon historical recruitment data,<sup>1</sup> making the assumption that future recruitment will follow a similar pattern.

In the absence of a clearly defined value of  $F_{max}$  for herring,  $F_{0.1}$  may reflect the level of fishing mortality that reasonably corresponds to the maximum equilibrium yield from the fishery, given the assumption of long-term average recruitment. By using the estimates of recruitment over the last ten years (Table 2.3.1.) and, assuming that these estimates are representative of the long-term average strength of a recruiting year class, a long-term average yield of 16,000 MT will result from applying a yield per recruit value associated with fishing at  $F_{0.1}$ . Admittedly, this estimate may be biased by ignoring a possible stock recruitment relationship, in which case the average recruitment might be expected to increase as spawning stock size increased to optimum

<sup>1</sup>Recruitment here is considered to be at age 4 based upon the assumption of the Beverton-Holt yield per recruit model where  $tp' = 4.275$ .

levels. It is understood that 16,000 MT does not represent the acceptable biological catch that may be established either at the present stock level (67,600 MT) or on a year-to-year basis.

As part of the scientific advice on the management of the 5Y spawning stock, ICNAF has recommended a minimum size constraint of 60,000 MT (ICNAF Redbook 1975, p. 46) and an optimum size of 80,000 to 120,000 metric tons has been suggested in recent NMFS/NEFC assessments. These constraints are designed to provide guidelines for the maintenance of a stock which will support continued and relatively stable recruitment. In this regard, levels of allowable catch from the 5Y spawning stock have been established for various rates of stock recovery. Tables 2.3.3. shows that in order to achieve a 10 percent rate of 5Y spawning stock increase, a stock TAC of 1,000 MT is appropriate. A catch of 7,000 metric tons may be taken from the stock if no increase is desired. The relationship between 1978 catch and resultant 1979 stock size is graphically represented in Figure 2.3.2. At the current stock level of 67,600 MT, fishing at  $F_{0.1}$  ( $F=0.34$ ) will result in stock decrease instead of stock maintenance and maximum equilibrium yield. Clearly fishing at  $F_{0.1}$  may only be considered after the stock has reached its optimum abundance.

#### 2.3.2.3. Georges Bank/Southern New England Adult Fishery

In general it is assumed that growth in the Georges Bank spawning stock varies only slightly (weight at age) from that characteristic of western Gulf of Maine adult herring:

$$L_t = 33.3(1 - e^{-0.51(t-0.003)})$$

Because the Beverton-Holt yield per recruit relationship based upon the above growth model demonstrates no apparent maximum as fishing mortality is increased (Fig. 2.3.3.),  $F_{max}$  again cannot be defined. The level of fishing mortality rate taken to correspond to optimum yield at optimum stock levels which may provide a buffer against over-fishing ( $F_{0.1}$ ) has been determined to be  $F_{0.1} = 0.33$  for the Georges Bank spawning stock.

Maximum equilibrium yields based upon fishing at  $F_{0.1}$  have been assessed at 100,000 to 150,000 MT corresponding to an optimum spawning stock size of 500,000 metric tons (See Herring FMP, FEDERAL REGISTER, February, 1977). As part of the scientific advice on the management of the 5Z/SA6 spawning stock, ICNAF has recommended a minimum spawning stock constraint of 225,000 metric tons to assure continued recruitment. If current spawning stock estimates (200,000 MT) are correct, it is clear that efforts to promote stock restoration are desirable.

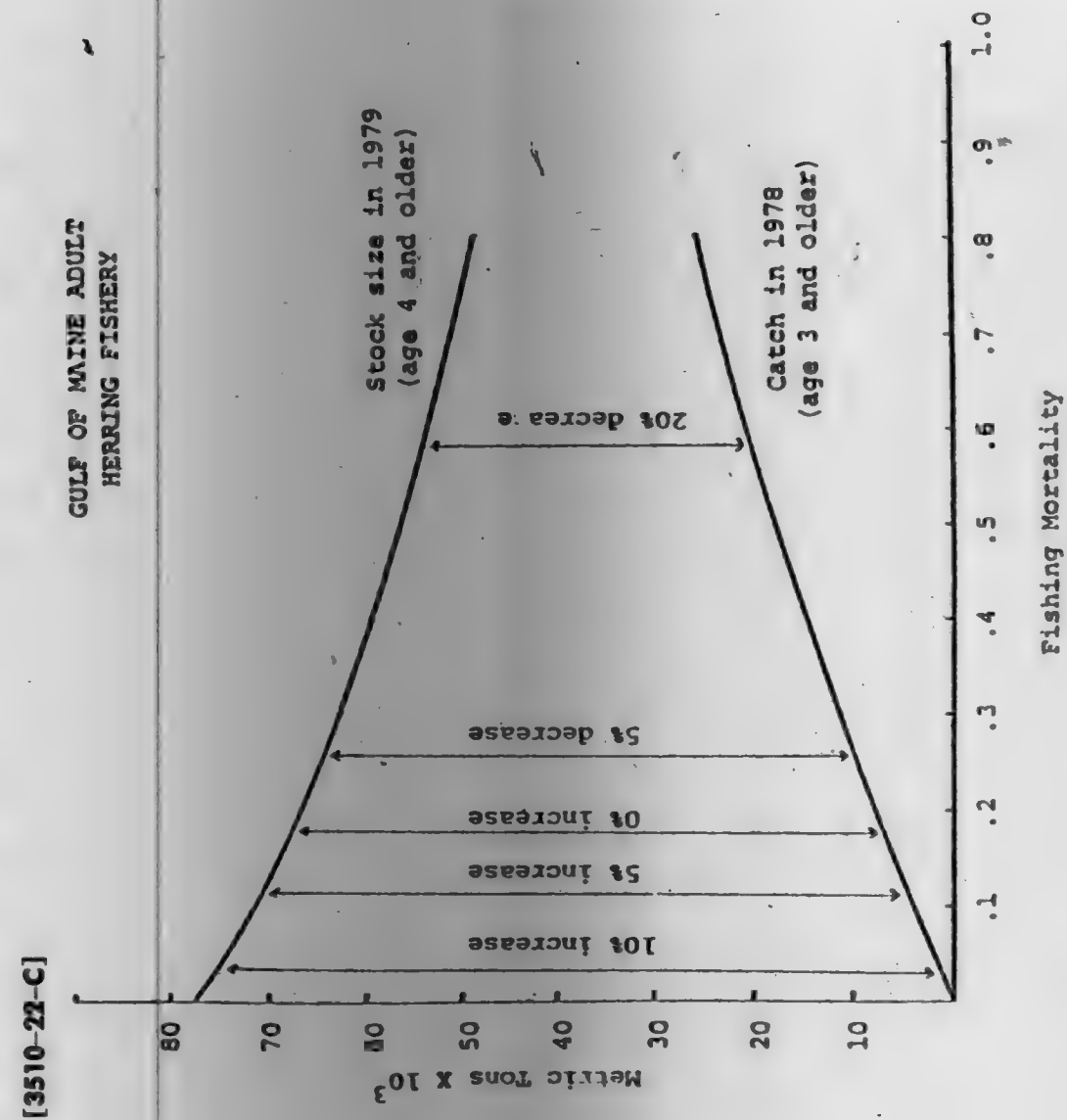


Figure 2.3.2. Percent change in spawning stock resulting from various levels of 1978 TAC in 5Y.

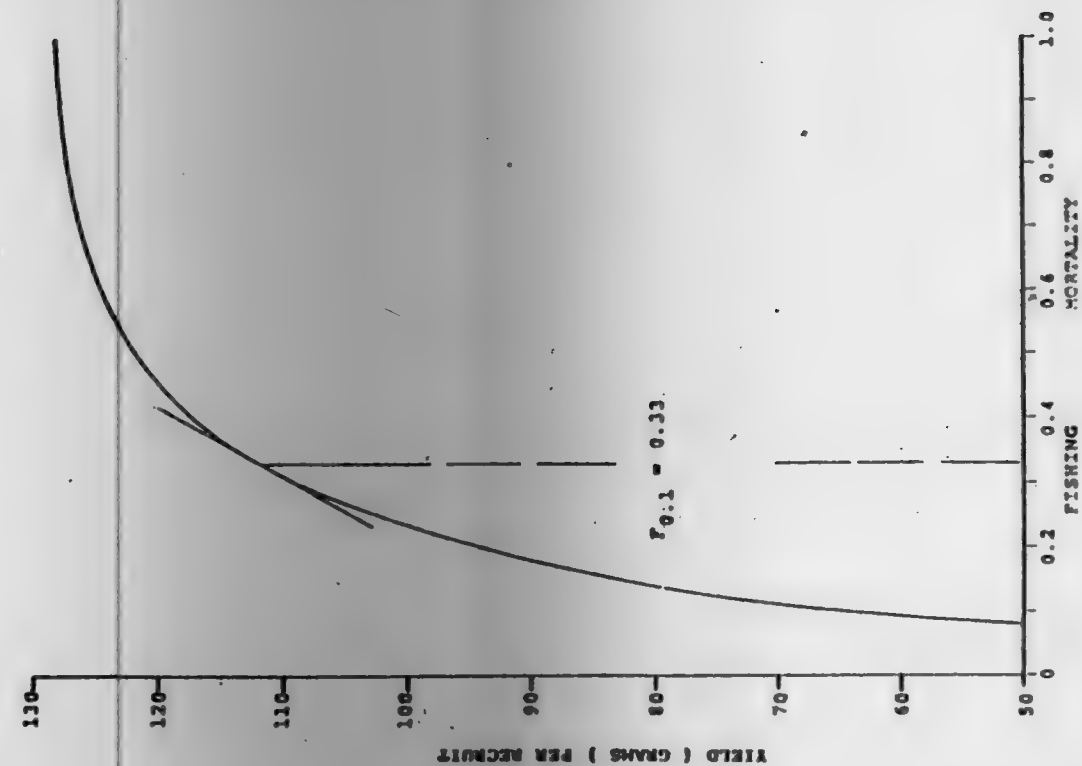


Figure 2.3.3. Beverton-Holt yield per recruit curve for Georges Bank herring.



In Table 2.3.3, are shown levels of 1978 catch corresponding to various rates of spawning stock recovery under three assumptions of spawning stock abundance. Given that the Georges Bank stock is at the critically low 300,000 MT level, recovery rates of no less than 15% are indicated in

order to reach the minimum recommended stock size at the beginning of 1979. Under this assumption, as much as 46,000 MT may be taken from the spawning stock in 1978. However, at the 200,000 MT level a 15% increase in stock size is probably not ade-

quate. Under the assumption that recruitment of the 1973 and 1974 year classes to the fishery has been poor (stock equal to 319,700 MT), 67,400 MT may be taken from the stock in 1978 to maintain the present level, and a catch of 35,000 MT will provide for a 10% 1978 rate of increase.

Table 2.3.3.

Acceptable Biological Catches (1978) Consistent With Various Rates of Stock Increase, With Resultant (1979) Stock Sizes

| Spawning Stock                                                     | Percent Recovery   | 1978 Catch<br>(age 3+)<br>Metric Tons | 1979 Stock<br>(age 4+)<br>Metric Tons    |
|--------------------------------------------------------------------|--------------------|---------------------------------------|------------------------------------------|
| <u>1/</u><br>Gulf of Maine<br>67,600 MT                            | 0<br>5<br>10<br>15 | 7,000<br>4,000<br>1,000<br>—          | 67,600<br>71,000<br>74,000<br>77,700     |
| <u>2/</u><br>Georges Bank<br>(good recruitment)<br>484,700 MT      | 0<br>10<br>12      | 63,300<br>40,900<br>40,900<br>15,300  | 484,700<br>507,900<br>534,600<br>550,500 |
| <u>2/</u><br>Georges Bank<br>(poor recruitment)<br>319,700 MT      | 0<br>5<br>10<br>15 | 67,400<br>52,000<br>35,400<br>20,000  | 319,700<br>335,200<br>352,000<br>367,700 |
| <u>2/</u><br>Georges Bank<br>(very poor recruitment)<br>199,000 MT | 0<br>5<br>10<br>15 | 76,100<br>66,200<br>56,300<br>46,600  | 199,000<br>209,100<br>219,300<br>229,400 |

1/ Estimated as part of NMFS/NEFC June 1977 assessment.

2/ Estimated as part of NMFS/NEFC December 1977 assessment update 1977 catch of 1,000 MT assumed for the Georges Bank stock.

2.4. The Expected Domestic Catch Assessment

2.4.1. Conceptual Basis

The FCMA requires that any FMP proposed by any Council shall "assess and specify the capacity and extent to which fishing vessels of the United States on an annual basis will harvest the optimum yield" (Sec. 303(a)(4)(A) of the FCMA). The most important of these two specifications is the latter one, i.e. the "extent to which, etc." since it directly influences the total allowable level of foreign fishing (Sec. 201(d) of the FCMA).

For purposes of this Plan the U.S. capacity for fishing Atlantic herring in 1978 is considered equal to the annual harvest of the optimum yield. This is referred to in the Plan as the expected annual domestic catch (EDC) of Atlantic herring.

The EDC in any fishery is the volume of fish landed as a result of the interaction and equating of supply and demand for a particular species. The harvesting supply of a species is influenced and constrained by, among other things, the particular management regulations in force. It follows that the EDCs, and thereby the foreign allowable catches, cannot be determined independently of management strategies.

The determination of the EDCs in this Plan associated with alternative management strategies is based on the notion that in a given management area and in a given year the EDC is equal to the area TAC evaluated as consistent with certain stock recovery rates or the expected catch under a "no plan" situation, whichever is less. It follows that if the EDC under a "no plan" situation

is greater than the TAC that is consistent with a particular rate of stock recovery, the total allowable level of foreign fishing (TALFF) is zero. It is assumed that domestic herring fishing effort preferentially directs itself to the Gulf of Maine (5Y) area. This assumption is corroborated by industry representatives as realistic in view of relative catch rates and anticipated operating costs per day at sea in various areas.

Furthermore, the assessments of the EDCs and the derivation of the TALFFs summarized in Table 2.4.1, are subject to the assumptions of the biological model presented in Section 2.6. In particular the annual Canadian catch in ICNAF Subarea 4XW is assumed to be 98,000 tons, the size of Georges Bank herring stock as of 1 January 1978 is assumed to be 199,000 tons and the seasonal distribution of catches follows their historical patterns. All EDCs and TALFFs for 5Y exclude catches of herring the territorial waters of the State of Maine.

2.4.2. Atlantic Herring EDC and Total Foreign Allowable Catch in 5Y for 1978

In the absence of any plan, the 1978 EDC of herring in 5Y is predicted to be equal to or greater than the 1977 commercial catch of herring in the area, i.e. 19,000 tons. This is based on a projected catch of 7,700 tons (1976/77 average) in the summer/fall fishery for adult herring (Table 2.4.2). Furthermore, this prediction is based on the expectations that the following forces will contribute toward continued high levels of effort and landings in the domestic herring fishery in 5Y.

(1) The expected continued ban on herring fishing in the North Sea will keep the

West German import price (C.J.F. Bremerhaven) at or above \$1000 per ton (frozen butterfly fillet). New England ex-vessel prices for adult herring which in response to increased import prices were rising in 1977 will continue to adjust upwards in 1978.

(2) The competition among New England processors for landings supply of herring will increase as new firms are entering in response to the favorable export market outlook. The present (July, 1977) New England herring fileting/freezing capacity of 500-750 tons of round herring per day is expected to increase substantially. As a result there is likely to be an upward pressure on ex-vessel prices as processors bid for supplies.

(3) The exploitation of the groundfish resources in 1978 are likely to continue to be restrictive. Vessels may seasonally transfer effort from these species to herring fishing.

The EDC for 5Y under a management strategy aiming at a zero percent stock recovery in 1978 is equal to the area TAC consistent with this stock recovery, i.e. 9-11,000 tons (Table 2.4.1.). Given a 5 percent stock recovery strategy, the EDC drops to 1,000 tons. In both cases the derived TALFF is zero.

2.4.3. Atlantic Herring EDC and TALFF in Area 5Z and SA6 for 1978

Herring fishing in the 5Z and SA6 area averaged 3200 tons annually in the period 1972-1976. This compares to 14,000 tons in 5Y (Table 2.4.3.). The fishery has primarily been a winter fishery off Rhode Island, Connecticut and New York. An area east and south of Cape Cod (including Nantucket Shoals) has been of some importance. A domestic fishery for herring on Georges Bank has historically not existed.



## [3510-22-C]

Table 2.4.1.

Assessment of Expected Domestic Catches (EDC) and Total Allowable Levels of Foreign Fishing (TALFF) for Herring in 1978 Under Certain Assumptions of Stock Recovery Rates <sup>1/</sup>  
(thousand metric tons)

| Area 5Y               |                   |        |               |
|-----------------------|-------------------|--------|---------------|
| Strategy              | Feasible Area TAC | EDC 5Y | Derived TALFF |
| 0 (no plan for 5Y)    |                   | ≥19    |               |
| 1 (0% stock recovery) | 9-11              | 9-11   | 0             |
| 2 (5% stock recovery) | 1                 | 1      | 0             |

## Area 5Z &amp; SA6 - conditional upon a 1000 ton TAC in 5Y

| Strategy                 | Feasible Area TAC   | EDC 5Z, 6     |              |       | Derived TALFF       |
|--------------------------|---------------------|---------------|--------------|-------|---------------------|
|                          |                     | Trad. Grounds | Georges Bank | Total |                     |
| 0 (no plan for 5Z & SA6) | 6                   | 8             | 14           |       |                     |
| 1 (10% stock recovery)   | 35-56 <sup>2/</sup> | 5             | 8            | 14    | 21-42 <sup>3/</sup> |
| 2 (15% stock recovery)   | 20-46               | 5             | 8            | 14    | 6-32                |

## Area 5Z &amp; SA6 - conditional upon a 10,000 ton TAC in 5Y

| Strategy                 | Feasible Area TAC   | EDC 5Z, 6     |              |       | Derived TALFF       |
|--------------------------|---------------------|---------------|--------------|-------|---------------------|
|                          |                     | Trad. Grounds | Georges Bank | Total |                     |
| 0 (no plan for 5Z & SA6) | 3                   | 4             | 7            |       |                     |
| 1 (10% stock recovery)   | 35-56 <sup>2/</sup> | 3             | 4            | 7     | 28-49 <sup>3/</sup> |
| 2 (15% stock recovery)   | 20-46               | 3             | 4            | 7     | 13-39               |

<sup>1/</sup> The assumed stock recovery rates represent arbitrary choices, not necessarily constraining Council decisions.

<sup>2/</sup> Range of values depends upon assumption of Georges Bank spawning stock abundance (See Table 2.3.3.).

<sup>3/</sup> Foreign allowable catch assumed to be taken entirely during the fall period.

Table 2.4.2.

Recorded and Projected Monthly Catches of Adult Herring in 5Y,  
(Statistical Areas 513 and 514) 1976-78 (metric tons) <sup>1/</sup>

| Month     | 1978                 | 1977   | 1976   |
|-----------|----------------------|--------|--------|
| January   | 3097                 | 2638   | 1016   |
| February  | 4056                 | 3473   | 895    |
| March     |                      | 3422   | 2923   |
| April     | 4300                 | 2779   | 3675   |
| May       |                      | 1159   | 261    |
| June      |                      | 170    | 25     |
| July      |                      | 157    | 1287   |
| August    |                      | 2160   | 1843   |
| September | 7700 <sup>2/</sup>   | 1380   | 2784   |
| October   |                      | 668    | 2174   |
| November  |                      | 179    | 1829   |
| December  |                      | 863    | 113    |
| Total     | 19,153 <sup>2/</sup> | 19,048 | 18,825 |

Sources: NEFC, Unpublished data  
Maine Department of Marine Resources, Unpublished data

<sup>1/</sup> Data have been adjusted to exclude catches of herring by purse seines in the territorial waters of the State of Maine.

<sup>2/</sup> Predicted total for 1978 under a "no plan" situation.



Table 2.4.3.

## U.S. Annual Herring Landings (Juvenile and Adult)

by Major Fishing Area

| AREA          |                   | Annual Average<br>1972-1976 |     | 1 9 7 6<br>Of Which Caught<br>Total in Adult Fishery |     |                     |     |
|---------------|-------------------|-----------------------------|-----|------------------------------------------------------|-----|---------------------|-----|
| Stat.<br>Code | Description       | Tons                        | %   | Tons                                                 | %   | Tons                | %   |
| 511           | Eastern Maine     | 3446                        | 10  | 6500                                                 | 13  | —                   | —   |
| 512           | Central Maine     | 14758                       | 4   | 20427                                                | 41  | 7652                | 39  |
| 513           | Western Maine     | 7055                        | 20  | 10913                                                | 22  |                     |     |
| 514           | Northern Mass.    | 7910                        | 22  | 11558                                                | 23  | 11558 <sup>1/</sup> | 58  |
| 520's         | East Cape Cod     | 171                         | 1   | 507                                                  | 1   | 507 <sup>1/</sup>   | 3   |
| 530's -       | Southern N.E. and | 2755                        | 8   | 152                                                  | 1   | 152 <sup>1/</sup>   | 1   |
| 600's         | Mid-Atlantic      |                             |     |                                                      |     |                     |     |
| TOTAL         |                   | 36096                       | 100 | 50056                                                | 100 | 19869               | 101 |

Source: NEFC, Woods Hole

<sup>1/</sup> Derived by subtracting from the total 50056 tons the total reported catch of weirs, stop-seines and inshore purse seines and the total herring catch in statistical areas 514 to 613.

A major determinant of the EDC in the area 5Z & SA6 is the overall catch limitation enforced in the 5Y area. Consequently, assessments of EDCs in the former area have to be made conditional upon TACs in the latter area. The alternative EDCs for the 5Z & SA6 areas shown in Table 2.4.1. are made conditional upon 5Y TAC levels of 1,000 tons and 10,000 tons respectively. The two 5Y TAC levels correspond to a 5 and zero percent 5Y spawning stock recovery goals respectively.

A quantitative prediction of the impact on the quantity of herring supplied from area 5Z & 6 from a reduction in the level of 5Y catch through restrictive TACs requires an understanding of:

(1) The fishing effort displaced in 5Y by restrictive TAC's (total and by vessel size and type);

(2) The extent to which various components of this displaced effort will be employed in herring fishing in various areas in the southern New England/Mid-Atlantic area and on Georges Bank; and

(3) The anticipated productivity of effort applied by various vessel categories in each of these areas.

There are no formal empirically tested and verified models to guide us with respect to predictions of (1) and (2). Furthermore, lacking historical records on vessel performance, there is considerable uncertainty associated with predicting catch per unit effort, particularly with respect to the fishery on Georges Bank. Consequently, it is possible to proceed only on the basis of assumptions. The specific assumptions on which the EDCs in area 5Z & SA6 under the "no plan" situation have been determined are as follows:

(a) The herring catch in the traditional fishing areas, i.e. off southern New England/Mid-Atlantic and east of Cape Cod including Nantucket Shoals out toward the Cultivator Shoals will increase from its recent low levels to its 1972-76 annual average of 3,000 tons, under conditions of a 5Y TAC of 10,000 tons. This reflects an expectation that under this 5Y TAC regime vessels (primarily trawlers) which in recent

years have been concentrating their winter/spring herring fishing effort to Massachusetts and Cape Cod Bays will seek compensation for lost catches in 5Y by increasing effort in the 5Z & SA6 areas.

(b) With a further reduction of the 5Y TAC to 1,000 tons, additional fishing effort will be displaced. Attempts by vessels in the class 70-90 ft. to develop a herring fishery east of Cape Cod out toward Cultivator Shoals will be intensified. In response, the catch from the area is expected to increase to 6,000 tons.

(c) The catch on Georges Bank (east of Cultivator Shoals) will be generated by the efforts of a handful of vessels; that have the necessary refrigeration systems and the capability of withstanding adverse weather and sea conditions. To sustain fishing in this area during the fall, vessels in this category seek a minimum catch per trip of 80 tons. With the 5Y TAC set at 10,000 tons these vessels are in a position to derive a larger portion of the gross stock from the 5Y herring fishery than what would be the case under a 1,000 ton 5Y TAC. In the former situation, 4,000 tons are expected to be harvested in the Georges Bank fishery as a result of 50 vessel trips yielding on the average 80 tons per trip. In the latter case, the effect on Georges Bank is expected to double which with an unchanged trip catch averaging 80 tons results in a total catch of 8,000 tons.

In summary, in the hypothetical situation of a 1,000 ton TAC in 5Y, the induced EDC in 5Z/SA6 is assessed as 14,000 tons and the combined EDC for 5Y/SA6 is 15,000 tons. If the catch limitation in 5Y alternatively was set at 10,000 tons, the induced 5Z/SA6 EDC would fall to 7,000 tons and the combined EDC would be 17,000 tons. Furthermore, a catch limitation in 5Y within the range of 1,000-10,000 tons is expected to induce an EDC in the 5Z/SA6 areas of between 7,000 and 14,000 tons.

The above EDC assessments reflect the expectation that losses of herring catches in 5Y through restrictive TACs to prevent further stock decline will not be fully made up in 1978 through increases in herring catches

in other areas. The 5Z & SA6 TALFF varies between 6,000 and 49,000 tons depending on the particular stock recovery goal sought and the 5Y TAC scenario.

## 2.5. Bio-economic Analysis Alternative of Stock Rebuilding Strategies

### 2.5.1. Management Strategies Considered

The economic impact analysis focuses on four alternative strategies (S<sub>1</sub>, S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub>) for the rebuilding of stocks through restrictive annual catch quotas. The expected consequences of failing to implement a stock rebuilding strategy, i.e. of a "no plan" alternative were examined.

In the absence of a plan to restrict harvesting in 5Y, the annual domestic catch of adult herring in the Gulf of Maine outside the State of Maine territorial waters, as discussed in Sec. 2.4.2., is expected to equal or exceed the 1977 catch level, i.e. 19,000 tons (Ref. Sec. 2.4.). If the catches of adult herring in Maine's territorial waters remain at levels experienced in recent years (16,500 tons in 1976), and if the assumption of the strengths of the 1973, 1974 and 1975 year classes are made as in Section 2.3., the total fishing mortality of herring in the Gulf of Maine is expected to continue at a level which will result in a reduction in 1978 of the adult herring stock size. In view of the above assessments, the "no action" alternative is found inconsistent with the objectives established for this FMP. Consequently, no further consideration is given to this alternative.

### 2.5.1.2. Four Alternative Stock Rebuilding Strategies

Each stock rebuilding strategy is characterized by its projected time paths of harvesting (annual EDCs) of herring (3+) in four different geographical areas over a ten year period. The four areas as shown in Figure 2.5.1. are identified as follows:

- Area 1: State of Maine territorial waters.
- Area 2: ICNAF Div. 5Y less State of Maine territorial waters.
- Area 3: ICNAF Div. 5Z and SA6 less Georges Bank east of Cultivator Shoals.
- Area 4: Georges Bank east of Cultivator Shoals.



[3510-22-C]

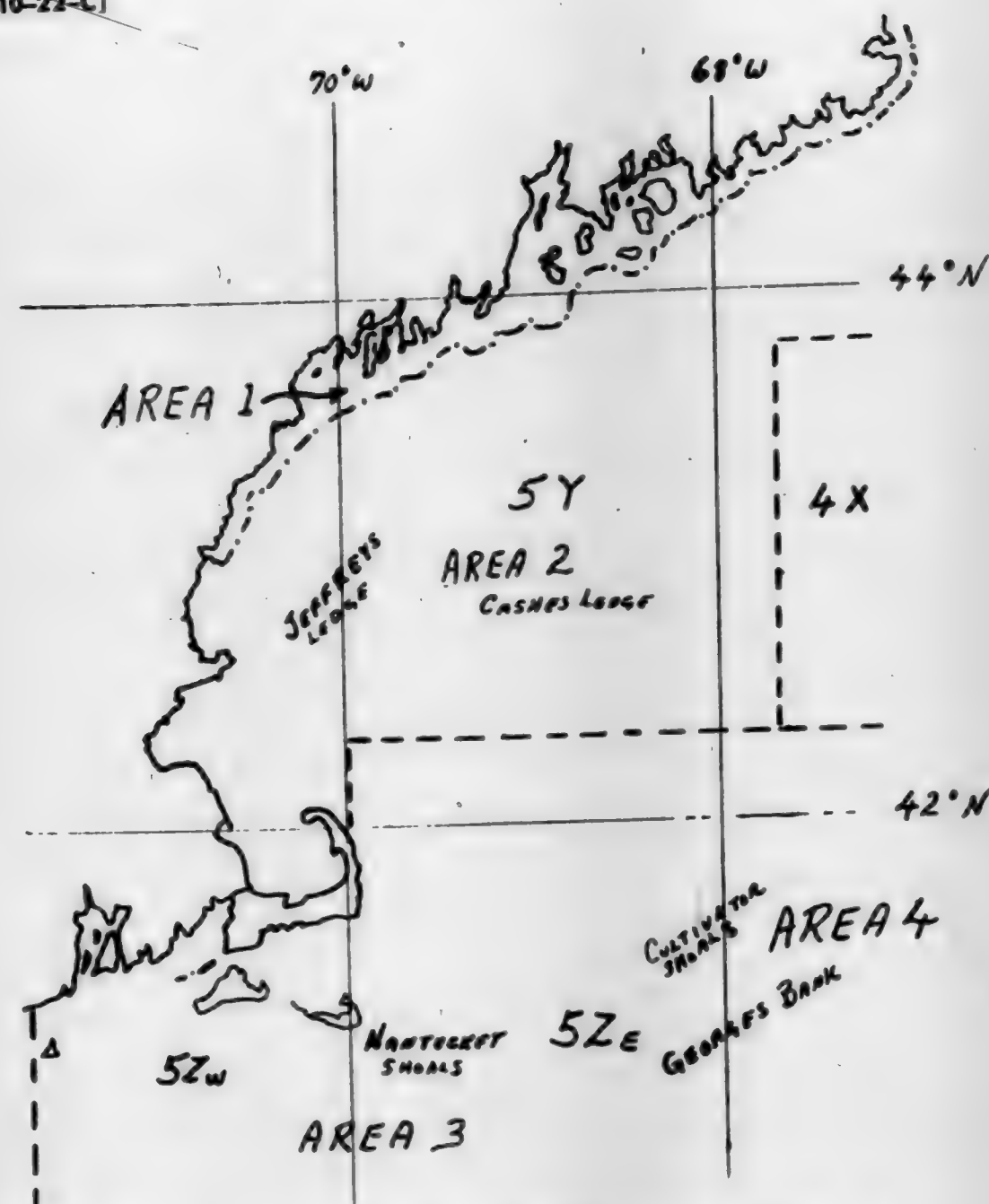


Figure 2.5.1. Exploitation areas considered in the economic and biological analysis in support of the herring FMP. Areas are separated by broken lines.

The ten year plan horizon was chosen to allow rebuilding of the 5Y herring stock under all four alternative strategies.

The four stock rebuilding strategies are defined primarily with reference to the exploitation of the adult herring stock in the Gulf of Maine. Rebuilding of this stock requires sacrifices in the current and near time periods. The stock rebuilding process thus involves an intertemporal "trade-off" of satisfactions. The stock restoration decision for the 5Z/SA6 herring stock is not as important as that for 5Y stock because the area TAC's in 5Z/SA6 that will ensure relatively high stock recovery rates are unlikely to restrict domestic herring catches. The expected domestic catch is less than the area TACs consistent with stock restoration goals of 10-15% (Table 2.4.1).

As discussed in the assessment of EDCs in Section 2.4., the domestic catches in 5Z and SA6 are predicted to be substantially increased by catch limitations enforced in the 5Y area. The catch scenarios projected for Areas 3 and 4 are therefore induced catch developments (implied EDCs) that are conditional upon certain catch restrictions in the 5Y area.

Area 1 catch levels, shown in Table 2.5.1. under the four stock rebuilding strategies, are recommended harvest limitations for the domestic fishery within Maine's territorial waters. In Area 2, catch levels are synonymous with TACs consistent with annual goals for rate of stock rebuilding. During the years of stock recovery, the Area 2 (5Y) TALFF is zero since the EDC in the absence of a plan exceeds the area TAC (Ref. Section 2.4.1.).

In Areas 3 and 4, the domestic catch levels are expected to be induced by restrictions in Area 2. Together with the annual goals of rebuilding of the Georges Bank herring stock, they determine the TALFF for the 5Z/SA6 area.

The distinguishing feature between the four stock rebuilding strategies is the timing of the initiation of the 5Y stock rebuilding program. Under S, stock restoration begins in 1978. Under S<sub>1</sub>, S<sub>2</sub>, and S<sub>3</sub>, the start of the recovery process is delayed one, two and three years respectively. The assumptions and considerations behind the projected catch scenarios under the four alternatives (Table 2.5.1.) are spelled out below.



[3510-22-C]

Table 2.5.1.

TAC/Catch Scenarios Under Four Alternative Stock Rebuilding Strategies (tons x 1000 of Herring 3 years +)

| Year                 | Area 1 | 5Y 2/<br>Area 2 | Area 3 | 5Z, SA6 2/<br>Area 4 | Total |
|----------------------|--------|-----------------|--------|----------------------|-------|
| <u>S<sub>1</sub></u> |        |                 |        |                      |       |
| 1978                 | 7      | 1               | 6      | 8                    | 22    |
| 1979                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1980                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1981                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1982                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1983                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1984                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1985                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1986                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1987                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| <u>S<sub>2</sub></u> |        |                 |        |                      |       |
| 1978                 | 7      | 10              | 3      | 4                    | 24    |
| 1979                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1980                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1981                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1982                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1983                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1984                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1985                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1986                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1987                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| <u>S<sub>3</sub></u> |        |                 |        |                      |       |
| 1978                 | 7      | 10              | 3      | 4                    | 24    |
| 1979                 | 9.5    | 10              | 3      | 4                    | 26.5  |
| 1980                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1981                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1982                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1983                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1984                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1985                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1986                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1987                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| <u>S<sub>4</sub></u> |        |                 |        |                      |       |
| 1978                 | 7      | 10              | 3      | 4                    | 24    |
| 1979                 | 9.5    | 10              | 3      | 4                    | 26.5  |
| 1980                 | 9.5    | 10              | 3      | 4                    | 26.5  |
| 1981                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1982                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1983                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1984                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1985                 | 9.5    | 1               | 6      | 8                    | 24.5  |
| 1986                 | 9.5    | 17              | 3      | 4                    | 33.5  |
| 1987                 | 9.5    | 17              | 3      | 4                    | 33.5  |

1/ Area 1 refers to inside 3 miles off the coast of the State of Maine, Area 2 refers to 5Y less Area 1.

2/ Area 4 refers to Georges Bank east of Cultivator Shoals. Area 3 refers to 5Z, SA6 less Area 4.

*Strategy S<sub>1</sub>*

Starting in 1978, an annual area TAC of 1,000 tons is enforced in Area 2 until the size of the Gulf of Maine stock has increased to the desired level of 100,000 tons. This TAC is consistent with a strategy designed to achieve a 10 percent stock recovery in 1978. It is foreseen that with the anticipated strengths of the incoming year classes and the envisaged annual rates of stock recovery the stock level of 100,000 tons will be attained in approximately five years, i.e. by the end of 1982. The annual area TAC consistent with the harvesting of the sustained surplus production of the Gulf of Maine stock at the 100,000 tons level has been determined to be approximately 17,000 tons, under the assumption of a closed season during spawning.

The catch in Area 1 has been assumed to be 7,000 tons in 1978 and 9,500 tons annually during the remainder of the time span considered. The value of 7,000 tons (fish 3+ years old) is considered appropriate to the expected magnitude of the 1975 year class (at age 3) in that the rate of fishing mortality on this age-group is held approximately constant with 1977. The value of 9,500 MT of 3+ age fish is appropriate to the average year class strength in the fishery, holding the fishing mortality rate constant. These assumptions are discussed further in Section 2.6.2.4.

The restrictive Area 2 annual TAC in the period 1978-1982 is expected to induce a considerable expansion of the 5Z & SA6 herring fishery relative to a "no plan" situation. The annual catches assumed for the Georges Bank fishery for the period 1978-82 reflect the activities from an estimated 100 vessel trips during a two month period (September-October) averaging 80 tons per trip. A total annual herring catch in 5Z & SA6 of 14,000 tons is assumed to be coupled with a TALFF which by virtue of its magnitude allows for the desired rate of recovery of the Georges Bank herring stock.

As the Gulf of Maine stock is restored to its desired level, it is assumed that fishermen with larger vessels fishing in Area 4 will direct a substantial portion of their herring fishing effort back to the Gulf of Maine (Area 2).

*S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub>*  
It is assumed under all three strategies that prior to initiation of stock rebuilding an annual TAC of 10,000 tons in Area 2 coupled with catch restrictions in Area 1 as outlined under S<sub>1</sub> insures that the present 5Y adult herring stock size remains unchanged. Once stock rebuilding is initiated,

annual Area 2 TACs of 1,000 tons are imposed for five years. The assumptions of year class strengths and annual stock increases during the stock rebuilding period made under S<sub>1</sub> are expected to hold for S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub> as well. Upon completion of stock rebuilding in 1984, 1985 and 1986 for S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub>, respectively, annual Area 2 TACs of 17,000 tons are assumed to keep the 5Y adult stock at around 100,000 tons.

Annual catches of herring (3 years +) in Area 1 are assumed to remain the same under S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub> as under S<sub>1</sub>.

Catches in Areas 3 and 4 (i.e. in Southern New England and on Georges Bank) prior to stock rebuilding are held at annual levels 3,000 and 4,000 tons respectively (see discussion of expected domestic catches in Section 2.4.). These levels are assumed to double in periods of stock rebuilding in 5Y, and upon completion of stock restoration fall back to their original levels.

*2.5.2. Evaluation Criteria Used in the Economic Impact Analysis*

The economic welfare implications of both management strategies extend to numerous industry user categories. In general, these categories may be grouped into the harvesting, processing and consumer sectors, of which the latter extends beyond the regional level. Lack of data and empirically verified demand and supply models prevent us from assessing the impact of the management strategies and their induced effects on the net benefits or economic surpluses derived by these various groups. In complying, as closely as possible, with the use of conventional benefit criteria, the following four income criteria have been applied to the impact analysis:

- (1) Returns from herring fishing to harvesting sector.
- (2) Value of processing in various industry sectors.
- (3) Income to labor in various industry sectors.
- (4) Aggregate regional income.

In addition, the criterion of employment in the processing sector has been used.

The above criteria, to which no individual weights have been assigned, are assumed to reflect the same dimensions of social and economic impacts that are subsumed in the statement of the management objectives.

With respect to (1), returns from herring fishing in Area 2 are measured as net of variable costs (labor and operational costs). The derivation of these costs are shown in Table A.5.2. in Appendix 5 and discussed in Section B of Appendix 4. The impacts of stock levels on costs per ton of herring caught in 5Y has been incorporated through an assumed relationship between

catch per day absent and the beginning of the year stock size.

In Areas 1, 3 and 4, neither catch per unit effort nor cost per day absent are known with any precision. As a result, gross returns are used. Area 4 gross returns have been crudely adjusted to account for anticipated higher cost of harvesting.

A detailed statement of the assumptions and the economic relations used in the economic impact analysis are given in Appendix 4.

*2.5.3. Method for Comparing Strategies*

The basic methodology for selecting among investment alternatives includes the present value method. The essential feature of this method is the discounting of all cash flows to present value from an investment decision. The discounting procedure implies that, in comparing future benefits with present costs, we recognize that a postponement of benefits involves sacrifice in itself. It is commonly assumed that the appropriate rate of interest at which cash flows are to be discounted should reflect society's rate of time preference. If, as assumed in this analysis, society is taken to be indifferent between having \$100 million today and \$108 million next year, the social rate of time preference is equal to 8 percent annually.<sup>2</sup> Where decisions involve more than one alternative, the project strategy with the highest present value is chosen.

*2.5.4. Results of Economic Impact Analysis*

The present value of the income flows projected over the ten-year period under the four alternative management strategies are shown in Table 2.5.2. and Figure 2.5.2. Additional tables showing the annual income levels under the different strategies are found in Appendix 5.

The present values of the income flows projected for S<sub>1</sub> exceed those projected under S<sub>2</sub>, S<sub>3</sub>, and S<sub>4</sub> for all economic impact criteria used. Figures shown within parenthesis represent the difference between, on the one hand, the values associated with S<sub>1</sub>, S<sub>2</sub>, and S<sub>3</sub>, and, on the other hand, the value predicted under S<sub>4</sub>. As such, they indicate the present value of the income streams that would be foregone by adopting strategies other than S<sub>1</sub>. Under the assumptions made and using the present value method of discriminating between strategies, S<sub>1</sub> is preferable to any of the other three stock rebuilding strategies.

<sup>2</sup>The generalized formula for the present value of an expected income stream is shown in Appendix 4.



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Table 2.5.2.

Summary of Economic Impact Analysis

Present Value of Income Flows<sup>1/</sup> and Employment Predicted Over the Period  
1978-1987 Under Alternative Strategies for Rebuilding of the 5Y Adult  
Herring Stock<sup>2/</sup> (million \$)

| Income/Employment flows generated<br>by catching/utilization of herring<br>3 years +                 | S T R A T E G Y |                  |                  |                  |
|------------------------------------------------------------------------------------------------------|-----------------|------------------|------------------|------------------|
|                                                                                                      | S <sub>1</sub>  | S <sub>2</sub>   | S <sub>3</sub>   | S <sub>4</sub>   |
| 1.a. Net income to harvesting sector<br>from herring fishing in Area 2                               | 2.55            | 2.42<br>(-.13)   | 2.28<br>(-.27)   | 2.02<br>(-.53)   |
| 1.b. Gross Returns <sup>3/</sup> to harvesting<br>sector from herring fishing<br>in Areas 1, 3 and 4 | 16.52           | 16.36<br>(-.16)  | 16.21<br>(-.31)  | 16.21<br>(-.31)  |
| 2. Value of processing<br>canning sector                                                             | 54.50           | 54.50            | 54.50            | 54.50            |
| filleting sector                                                                                     | 16.94           | 16.51<br>(-.43)  | 16.09<br>(-.85)  | 15.52<br>(-1.42) |
| 3. Labor income<br>canning sector                                                                    | 7.36            | 7.36             | 7.36             | 7.36             |
| filleting sector                                                                                     | 6.18            | 5.96<br>(-.22)   | 5.76<br>(-.42)   | 5.56<br>(-.62)   |
| 4. Employment (thousand man months)<br>canning sector                                                | 26.7            | 26.7             | 26.7             | 26.7             |
| filleting sector                                                                                     | 14.4            | 13.9             | 13.4             | 13.9             |
| 5. Regional Income                                                                                   | 75.17           | 73.66<br>(-1.51) | 72.15<br>(-3.02) | 70.48<br>(-4.69) |

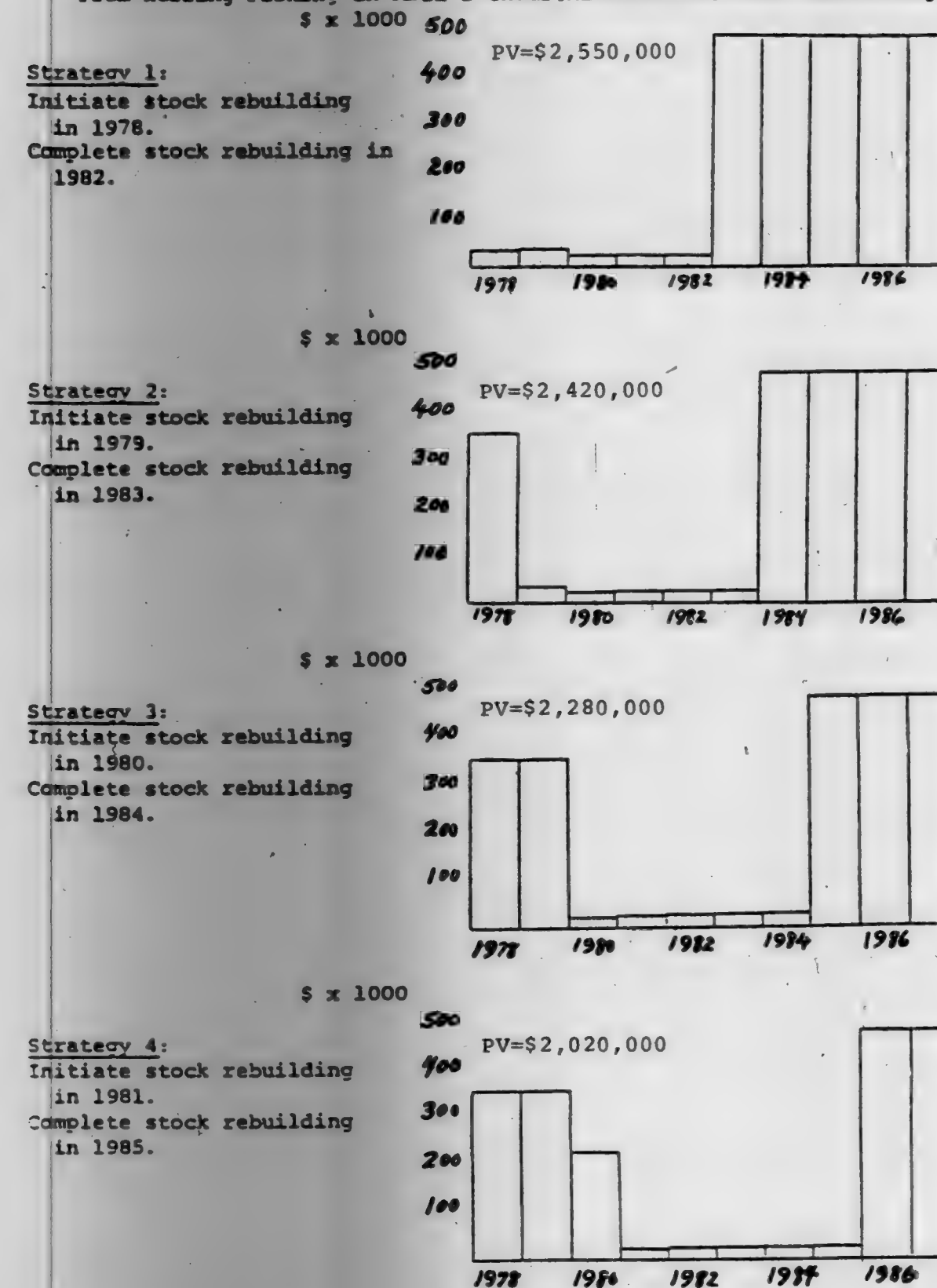
<sup>1/</sup> All income flows have been discounted using a factor of 8 percent.

<sup>2/</sup> Figures shown within parenthesis represent the difference between on the one hand the values associated with S<sub>2</sub>, S<sub>3</sub> or S<sub>4</sub> and on the other hand the value predicted under S<sub>1</sub>.

<sup>3/</sup> Gross returns from herring fishing in Area 4 have been adjusted by a factor of .7 to reflect the anticipated higher cost of fishing in this area relative to others.

Figure 2.5.2.

Present Value of Predicted Annual Net Income to Harvesting Sector  
From Herring Fishing in Area 2 Under Alternative Stock Rebuilding Strategies



Source: Table A.5.3. in Appendix 5.







[3510-22-C]

Table 2.6.1.

Percent Distribution of Spawning Stock in Area by Period

| Period                 | Stock<br>(generalized) | Exploitation Area |     |        |
|------------------------|------------------------|-------------------|-----|--------|
|                        |                        | 4KW               | 5Y  | 5Z/SA6 |
| 1<br>(December-March)  | <sup>1/</sup> Lurcher  | 50                | 30  | 20     |
|                        | <sup>2/</sup> Jeffreys | 0                 | 50  | 50     |
|                        | Georges                | 0                 | 0   | 100    |
| 2<br>(April-May)       | Lurcher                | 60                | 35  | 5      |
|                        | Jeffreys               | 10                | 75  | 15     |
|                        | Georges                | 0                 | 10  | 90     |
| 3<br>(June-July)       | Lurcher                | 50                | 40  | 0      |
|                        | Jeffreys               | 30                | 70  | 0      |
|                        | Georges                | 5                 | 20  | 75     |
| 4<br>(August-November) | Lurcher                | 90                | 10  | 0      |
|                        | Jeffreys               | 0                 | 100 | 0      |
|                        | Georges                | 0                 | 0   | 100    |

- <sup>1/</sup> The Lurcher stock refers to the southwest Nova Scotia spawning stock.
- <sup>2/</sup> The Jeffreys stock refers to the western Gulf of Maine spawning aggregations.

Errors associated with the magnitude of stock intermixture are difficult to estimate. Area TACs generated by the model indicate that actual yields in 5Y may be substantially in excess of the allowable removals from the spawning stock, depending upon the seasonal distribution of catches in all areas. The additional yield is a function of fish from other stocks being seasonally available to the fishery in the 5Y area. Although somewhat crude, the allowable catch in excess of the acceptable removals from the spawning stock does give an estimate of the maximum likely error which could be associated with the establishment of TACs for the 5Y spawning stock, assuming no seasonal stock overlap.

2.6.2. Generation of Feasible Area/Period TACs

2.6.2.1. Seasonal Catch Distribution Assumptions

While the model can reasonably consider any distribution of catch over the fishing year, several 5Y options have been selected as being appropriate for analysis. For each 5Y catch distribution option, certain assumptions must be made about the seasonal pattern of exploitation in areas 4KW and 5Z/SA6. For the 4KW area, the distribution was calculated based upon monthly catches reported in *ICNAF Statistical Bulletin* averaged over the years 1970-1975.

Similarly, the distribution of herring catch by exploitation period could be calculated for 5Z/SA6 using data reported in *ICNAF Statistical Bulletin* relating to foreign fishing activity. This distribution is not useful to the purposes of the model, however, because expected domestic activity is not reflected. In terms of a domestic fishery in the 5Z/SA6 area, two seasonal periods of activity may be expected: 1) the winter fishery in 5Zw, south of Cape Cod, and 2) the summer/fall fishery in 5Ze. No herring fishery is anticipated in 5Z/SA6 between April 1st and July 31st. However, any assumed harvest during these months could be expected to have little impact upon feasible area TACs.

Taking historic, domestic 5Zw catches into consideration with total anticipated 5Z/SA6 catch (see Section 2.4.), it seems reasonable to initially assume a percent harvest distribution of 30, 0, 0, 70 for exploitation periods 1 through 4 in this exploitation area. The possibility exists, however, that little harvest will be available south of Cape Cod during period 1. In this case, a resultant distribution of 15, 0, 0, 85 may be more appropriate. Using these distributions for catch in 5Z/SA6, it is possible to examine various seasonal harvest strategies for 5Y. A historic distribution option was considered, along with several winter/spring: fall catch ratio options so as to provide insight into the full

range of possible 5Y catch distribution options (with implicit tradeoffs), while reflecting recent seasonal trends in the 5Y fishery. The percent distribution of catch by exploitation area and period is shown in Table 2.6.2 for each harvest option considered. The distribution of catch by period in 4KW is considered constant throughout the analysis, reflecting the 1970-1975 historic data.

2.6.2.2. Biological Stock Constraints

In Table 2.6.3, are shown the levels of acceptable catch from the Gulf of Maine (5Y) and Georges Bank/Southern New England (5Z/SA6) spawning stocks (age 4+) corresponding to 0% and 10% rates of stock increase. If, as has been assumed (see Section 2.3.) the 5Z/SA6 spawning stock is 199,000 MT, then it is clear that maximum stock rebuilding is desirable. A 10% increase in this stock will not be sufficient to meet the minimum desirable spawning stock size requirements (225,000 MT). As has been discussed in Section 2.4, domestic effort can be expected to focus on inshore waters, primarily in 5Y. As a result, expected domestic catches from the 5Z/SA6 area are not expected to be in excess of 16,000 MT for the immediate future. Thus, the biological catch constraints placed on the 5Y spawning stock become primary considerations in generating area/period TACs.

Table 2.6.2.

Percent Distribution of Catch for Each Exploitation Area by Period

| Period                                                       | Exploitation Area |      |                 |      |
|--------------------------------------------------------------|-------------------|------|-----------------|------|
|                                                              | 4X                | 5Y   | 5Z/SA6 (a or b) |      |
| Option 1. Historical 5Y Catch Distribution 1973-1977         |                   |      |                 |      |
| 1. December-March                                            | 13.5              | 32.3 | 30.0            | 15.0 |
| 2. April-May                                                 | 6.3               | 12.4 | 0               | 0    |
| 3. June-July                                                 | 38.4              | 0    | 0               | 0    |
| 4. August-November                                           | 41.8              | 55.3 | 70.0            | 85.0 |
| Option 2. Winter/Spring Only Fishery in 5Y                   |                   |      |                 |      |
| 1. December-March                                            | 13.5              | 71.0 | 30.0            | 15.0 |
| 2. April-May                                                 | 6.3               | 29.0 | 0               | 0    |
| 3. June-July                                                 | 38.4              | 0    | 0               | 0    |
| 4. August-November                                           | 41.8              | 0    | 70.0            | 85.0 |
| Option 3. Winter/Spring: Fall 5Y Catch Distribution of 70:30 |                   |      |                 |      |
| 1. December-March                                            | 13.5              | 50.0 | 30.0            | 15.0 |
| 2. April-May                                                 | 6.3               | 20.0 | 0               | 0    |
| 3. June-July                                                 | 38.4              | 0    | 0               | 0    |
| 4. August-November                                           | 41.8              | 30.0 | 70.0            | 85.0 |
| Option 4. Winter/Spring: Fall 5Y Catch Distribution of 30:70 |                   |      |                 |      |
| 1. December-March                                            | 13.5              | 21.0 | 30.0            | 15.0 |
| 2. April-May                                                 | 6.3               | 9.0  | 0               | 0    |
| 3. June-July                                                 | 38.4              | 0    | 0               | 0    |
| 4. August-November                                           | 41.8              | 70.0 | 70.0            | 85.0 |



Table 2.6.3.

Acceptable Levels of Catch (stock removal) from the Gulf of Maine  
and Georges Bank Spawning Stocks

| Stock                                 | Spawning Stock<br>Level (age 4+) | Acceptable Catch (age 3+)<br>for Stock Recovery |                         |
|---------------------------------------|----------------------------------|-------------------------------------------------|-------------------------|
|                                       |                                  | 0%                                              | 10%                     |
| Gulf of Maine                         | 67,600 MT                        | 7,000 MT                                        | 1,000 MT                |
| Georges Bank/<br>Southern New England | 199,000 MT <sup>1/</sup>         | 76,100 MT                                       | 56,300 MT <sup>4/</sup> |
| Georges Bank/<br>Southern New England | 319,700 MT <sup>2/</sup>         | 67,400 MT                                       | 35,400 MT               |
| Georges Bank/<br>Southern New England | 484,700 MT <sup>3/</sup>         | 63,300 MT                                       | 15,300 MT               |

- <sup>1/</sup> Stock abundance level assuming poorer than estimated recruitment of the 1971 and 1972 year classes as well as poor recruitment of the 1973 and 1974 year classes.
- <sup>2/</sup> Stock abundance level assuming poor recruitment of 1973, 1974 year classes.
- <sup>3/</sup> Stock abundance level assuming good recruitment of 1973, 1974 year classes.
- <sup>4/</sup> Not sufficient growth to achieve minimum spawning stock constraint.

In generating area TAC values which are consistent with the levels of acceptable catch from each spawning stock, an iterative approach is required. Shown in Table 2.6.4. is an array of possible harvest strategies for herring in exploitation areas 5Y and 5Z/SA6. Sample area TACs have been generated which correspond to various combinations of spawning stock recovery rates, indicating that certain trade-offs are possible due to stock interaction. In this example, the analysis is constrained by the 7,000 MT acceptable biological catch level set to achieve spawning stock maintenance in 5Y. Additionally, catches in 4KW are assumed constant at 98,000 MT (recommended Canadian 1978 TAC). The 5Y catch distribution used in this illustration is appropriate to a 1973-1977 average. In Table 2.6.4. it is seen that with no harvest in 5Y or 5Z/SA6, over 3,000 MT are removed from the 5Y stock as a result of fishing mortality induced on migratory 5Y fish in 4KW.

As noted in 2.6.1.2., assumptions concerning stock abundance are a source of error in the model. In this analysis the Georges Bank spawning stock (age 4+) is assumed to be 199,000 MT (see Section 2.3.). Given that this stock is in excess of the assumed level, Table 2.6.4. additionally presents a comparison of feasible area TACs assuming a spawning stock abundance of 319,000 MT. In general it is seen that the maximum catch benefit derived from an additional 120,000 MT of spawning stock on Georges Bank is minimal for the 5Y fishery. Clearly this comparison is appropriate to the assumed seasonal distribution of catch in 5Y (historical catch distribution, option 1.a.). However, even as 5Y catches may shift to favor the winter/spring period (5Y catch options 2 or 3), the benefit in 5Y is not expected to increase significantly.



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Table 2.6.4.

## Illustrative Harvest Strategies Consistent with Rates of Stock Recovery

## Under Two Assumptions of Georges Bank Spawning Stock Abundance

| Area TACs (MT)                                      |        | Stock Removals (MT) |        | Implied Stock Recovery |        |
|-----------------------------------------------------|--------|---------------------|--------|------------------------|--------|
| 5Y                                                  | 5Z/SA6 | 5Y                  | 5Z/SA6 | 5Y                     | 5Z/SA6 |
| <b>A. Georges Stock Assumed 199,000 MT (age 4+)</b> |        |                     |        |                        |        |
| 8000                                                | 0      | 7000                | 1605   | 0%                     | >15%   |
| 7500                                                | 7050   | 7000                | 7912   | 0%                     | >15%   |
| 7000                                                | 14100  | 7000                | 14219  | 0%                     | >15%   |
| 0                                                   | 0      | 3255                | 1506   | 5%                     | >15%   |
| <b>B. Georges Stock Assumed 319,000 MT (age 4+)</b> |        |                     |        |                        |        |
| 8150                                                | 0      | 7000                | 2510   | 0%                     | >15%   |
| 8000                                                | 3650   | 7000                | 5883   | 0%                     | >15%   |
| 7500                                                | 13420  | 7000                | 14911  | 0%                     | >15%   |
| 7000                                                | 23200  | 7000                | 23948  | 0%                     | >10%   |
| 0                                                   | 0      | 3182                | 2357   | 5%                     | >15%   |

- 1/ Catch distributions by period in 5Y and 5Z/SA6 are assumed to be consistent with Option 1.a. Spawning stock abundances (age 4+) are assumed to be 363,000 MT and 67,600 MT for the Southwest Nova Scotia and western Gulf of Maine spawning stocks respectively.

For a specific level of TAC in 5Y, however, the increased Georges Bank stock size provides for an additional allowable catch outside of 5Y. Since the total allowable catch in the 5Z/SA6 area depends in part upon the seasonal distribution of catch between Georges Bank and Southern New England, harvests are constrained by the degree to which migratory 5Y fish are exploited in the 5Zw winter fishery south of Cape Cod. To the extent that the 5Z/SA6 fishery may be pursued during a seasonal period when no 5Y fish are likely to be taken (see Table 2.6.1.), the catches from this fishery are only constrained by the level of acceptable biological catch from the Georges Bank stock, set according to specific management criteria.

#### 2.6.2.3. Area/Period TAC Options for the Adult Herring Fishery

Tables 2.6.5.a.-d. are of primary value as a source of biological advice relating to the selection of a TAC strategy for the management of the adult sea herring resource within the jurisdiction of the U.S., which is consistent with the stated management objectives and which provides a basis for the establishment of optimum yield. From Table 2.6.4. it is clear that a 10% rate of 5Y spawning stock increase cannot reasonably be achieved in 1978, given the stated assumptions of year class strength (Section 2.3.1.). However, any effort to limit harvest can be expected to lead to improved prospects for stock increase and greater levels of acceptable yield in future years.

Using the seasonal distributions of catch in 5Y and 5Z/SA6 overviewed in Table 2.6.2., it is possible to examine various TAC scenarios for the 5Y adult herring fishery. The analyses presented in Tables 2.6.5.a. through d. are intended to apply specifically to the adult herring fishery in the Gulf of Maine (here 5Y) outside of Maine territorial waters but to the shore elsewhere, as well as to waters outside the Gulf of Maine (here 5Z/SA6) which are currently within the purview of the PCMA. Reflected in Tables 2.6.5.a. through d. are TAC scenarios consistent with two levels of total catch from the combined adult fisheries. For each of the four options presented, two (a and b) possible 5Z/SA6 seasonal catch distributions reflect the relative availability of fish which might be observed in this area. Seasonal periods 1 through 4 are defined by monthly groupings in Table 2.6.2. and abbreviated by number thereafter. The term "winter/spring" represents the fishing activity associated with the months December through May or June. The term "fall" represents the

fishing activity associated with the months July or August through November. Historically the months of June and July reflect diminished activity in the domestic adult herring fishery. During this time herring are dispersed and not readily available to the gear. No fishing activity is explicitly allocated during June and July (period 3) under any option. Rather, it is assumed that TAC quotas assigned to periods 1 and 2 may be extended into June as necessitated by availability, and TAC quotas assigned to period 4 may be initiated in July as indicated by availability.

The recent historical fishery for adult herring in 5Y has reflected a winter/spring to fall catch distribution ratio of 44.7:55.3. This distribution is the basis for establishing feasible area/period TACs under option 1. In Table 2.6.5.a. are shown total allowable catches from 5Y and 5Z/SA6 translated to period TACs for options 1.a. and 1.b. Reflected under option 1.a. are area/period TACs consistent with the 5Y catch distribution above and a seasonal 5Z/SA6 percent catch distribution of 30, 0, 0, 70. Option 1.b. reflects a seasonal 5Z/SA6 percent catch distribution of 15, 0, 0, 85. Under this option (and all others to follow) two total catch levels are considered: 1) 20,000 MT, equivalent to 1977, and 2) 24,000 MT, equivalent to 1977 plus 20%. It is seen in the table that for higher levels of total catch, less harvest can be taken from within 5Y.

In 1977 the catch in 5Y during periods 1 and 2 amounted to 13,500 MT. Because the herring fishery in 5Y is expected to be unregulated through June 1978, a catch equivalent to 1977 should be anticipated for periods 1 and 2 this year. In order to provide the maximum harvest of herring from 5Y, without allowing for 5Y spawning stock increase, a catch scenario such as option 2 (Table 2.6.2.) which focuses all catch into the winter/spring period must be considered. In Table 2.6.5.b. are shown the allowable catches from 5Y and 5Z/SA6 translated to period TACs for options 2.a. and 2.b. Included under option 2.a. are feasible area/period TACs consistent with a period 1, 2 only fishery in 5Y and a seasonal 5Z/SA6 percent catch distribution corresponding to option 1.a.

Option 2.a. allows for catch in the 5Zw winter (period 1) fishery which may not be totally harvested. In the latter case Option 2.b. examines how TACs in 5Y may be increased if less is taken (%) in 5Zw. At both levels of catch (20,000 and 24,000 MT) it is seen that about 40% of any unharvested 5Zw period 1 quota may be transferred to the winter/spring fishery in 5Y. The total

5Y area TACs given under Options 2.a. and b. are reasonably close to what may be expected in terms of 1978 periods 1 and 2 harvest from 5Y. Under this option it is clear that fishery should cease in 5Y for the remainder of 1978 (periods 3 and 4) (with up to 8,000 MT being available to the fall fishery in 5Z only) if the 5Y spawning stock is to be maintained in calendar year 1978. Thus, an anticipated 5Y winter/spring fishery approaching 1977 levels could be expected to result in distributional consequence for other 5Y operators, i.e.: no 5Y fall fishery.

Given that the periods 1 and 2, 1978 5Y fishery will not harvest 13,500 MT, other options which distribute catch into the fall period may be considered. Shown in Table 2.6.5.c. are options which require a 5Y catch distribution which guarantees 30% to the fall fishery. Such a distribution, however, lowers the total allowable catch which may be taken in 5Y from its maximum. Option 2 range of TAC values. Under Option 3, only about 20% of any untaken 5Zw period 1 allowable catch may be transferred to periods 1 and 2 in 5Y (compare Options 3.a. and 3.b.), or a total of about 30% may be transferred to the entire 5Y fishery.

Comparison between Options 2 and 3 indicates that because of the seasonal overlap of stocks in 5Y, only about 35% of every ton shifted out of the TAC for periods 1 and 2 in 5Y may be assigned to period 4. These percent transfer values are specific to the catch distribution assumptions explicit in each option; however, they are representative for most catch distributions which might be considered. If, for example, only 8,000 MT of herring were caught during periods 1 and 2 (1978) in 5Y and 1,500 MT were caught during period 1 in 5Zw, then, you could expect that  $(13,500-8,000) \times .35 = 2,000$  MT, plus perhaps 500 MT transferred from 5Zw, might be made available to the fall purse-seine fishery in 5Y.

Options 4.a. and b. consider a 5Y catch distribution which allocates 70% to the fall fishery, a catch level in excess of recent historical values (Table 2.6.5.d.). Under this catch distribution, total allowable 5Y harvest is the most restrictive for all options discussed. That is, as higher catches are sought for the period 4 fishery in 5Y, total 1978 allowable catches in 5Y are decreased. Comparison among Options 1 through 4 shows that catches in 5Y are maximized as the fishery turns toward periods 1 and 2. It would appear that accommodation of period 4 fishing interests may have to be made by refocusing that component of the fishery toward 5Zc.



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Table 2.6.5.a.

Total Allowable Catches (5Y and 5Z/SA6 Translated to Period TACs  
by Area for the 5Y Historical Catch Distribution Option 1 (a & b) <sup>1/</sup>

| Option | Total Catch | Period | 5Y           |       | 5Z/SA6       |       |
|--------|-------------|--------|--------------|-------|--------------|-------|
|        |             |        | Distribution | Quota | Distribution | Quota |
| 1.a.   | 20,000 MT   | 1      | .323         | 2290  | .30          | 3880  |
|        |             | 2      | .124         | 880   | 0            | 0     |
|        |             | 3      | 0            | 0     | 0            | 0     |
|        |             | 4      | .553         | 3910  | .70          | 9040  |
|        |             | TAC    |              | 7080  |              | 12920 |
|        | 24,000 MT   | 1      | .323         | 2190  | .30          | 5170  |
|        |             | 2      | .124         | 840   | 0            | 0     |
|        |             | 3      | 0            | 0     | 0            | 0     |
|        |             | 4      | .553         | 3750  | .70          | 12050 |
|        |             | TAC    |              | 6780  |              | 17220 |
| 1.b.   | 20,000 MT   | 1      | .323         | 2440  | .15          | 1870  |
|        |             | 2      | .124         | 940   | 0            | 0     |
|        |             | 3      | 0            | 0     | 0            | 0     |
|        |             | 4      | .553         | 4180  | .85          | 10570 |
|        |             | TAC    |              | 7560  |              | 12440 |
|        | 24,000 MT   | 1      | .323         | 2390  | .15          | 2490  |
|        |             | 2      | .124         | 920   | 0            | 0     |
|        |             | 3      | 0            | 0     | 0            | 0     |
|        |             | 4      | .553         | 4100  | .85          | 14100 |
|        |             | TAC    |              | 7410  |              | 16590 |

<sup>1/</sup> 5Y area TACs are calculated to maintain the spawning stock at its current level of abundance.

Table 2.6.5.b.

Total Allowable Catches (5Y and 5Z/SA6) Translated to Period  
TACs by Area for the 5Y Winter/Spring Fishery Option 2. (a & b) <sup>1/</sup>

| Option | Total Catch | Period | 5Y           |        | 5Z/SA6       |        |
|--------|-------------|--------|--------------|--------|--------------|--------|
|        |             |        | Distribution | Quota  | Distribution | Quota  |
| 2.a.   | 20,000 MT   | 1      | .71          | 10,335 | .30          | 1,633  |
|        |             | 2      | .29          | 4,222  | 0            | 0      |
|        |             | 3      | 0            | 0      | 0            | 0      |
|        |             | 4      | 0            | 0      | .70          | 3,810  |
|        |             | TAC    |              | 14,557 |              | 5,443  |
|        | 24,000 MT   | 1      | .71          | 9,885  | .30          | 3,023  |
|        |             | 2      | .29          | 4,038  | 0            | 0      |
|        |             | 3      | 0            | 0      | 0            | 0      |
|        |             | 4      | 0            | 0      | .70          | 7,054  |
|        |             | TAC    |              | 13,923 |              | 10,077 |
| 2.b.   | 20,000 MT   | 1      | .71          | 10,580 | .15          | 765    |
|        |             | 2      | .29          | 4,320  | 0            | 0      |
|        |             | 3      | 0            | 0      | 0            | 0      |
|        |             | 4      | 0            | 0      | .85          | 4,335  |
|        |             | TAC    |              | 14,900 |              | 5,100  |
|        | 24,000 MT   | 1      | .71          | 10,370 | .15          | 1,410  |
|        |             | 2      | .29          | 4,230  | 0            | 0      |
|        |             | 3      | 0            | 0      | 0            | 0      |
|        |             | 4      | 0            | 0      | .85          | 7,990  |
|        |             | TAC    |              | 14,600 |              | 9,400  |

<sup>1/</sup> 5Y area TACs are suggested to maintain the spawning stock at its current level of abundance.



Table 2.6.5.c.

Total Allowable Catches (5Y and 5Z/SA6) Translated to Period TACs  
by Area for the 5Y Intermediate Fishery Option 3. (a & b)<sup>1/</sup>

| Option | Total Catch | Period | 5Y           |       | 5Z/SA6       |        |
|--------|-------------|--------|--------------|-------|--------------|--------|
|        |             |        | Distribution | Quota | Distribution | Quota  |
| 3.a.   | 20,000 MT   | 1      | .50          | 4,575 | .30          | 3,255  |
|        |             | 2      | .20          | 1,830 | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .30          | 2,745 | .70          | 7,595  |
|        |             | TAC    |              | 9,150 |              | 10,850 |
|        | 24,000 MT   | 1      | .50          | 4,400 | .30          | 4,560  |
|        |             | 2      | .20          | 1,760 | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .30          | 2,640 | .70          | 10,640 |
|        |             | TAC    |              | 8,800 |              | 15,200 |
| 3.b.   | 20,000 MT   | 1      | .50          | 4,850 | .15          | 1,545  |
|        |             | 2      | .20          | 1,940 | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .30          | 2,910 | .70          | 8,755  |
|        |             | TAC    |              | 9,700 |              | 10,300 |
|        | 24,000 MT   | 1      | .50          | 4,750 | .15          | 2,175  |
|        |             | 2      | .20          | 1,900 | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .30          | 2,850 | .85          | 12,325 |
|        |             | TAC    |              | 9,500 |              | 14,500 |

<sup>1/</sup> 5Y area TACs are suggested to maintain the spawning stock at its current level of abundance.

Table 2.6.5.d.

Total Allowable Catches (5Y and 5Z/SA6) Translated to Period TACs  
by Area for the 5Y Fishery Option 4. (a & b)<sup>1/</sup>

| Option | Total Catch | Period | 5Y           |       | 5Z/SA6       |        |
|--------|-------------|--------|--------------|-------|--------------|--------|
|        |             |        | Distribution | Quota | Distribution | Quota  |
| 4.a.   | 20,000 MT   | 1      | .21          | 1,296 | .30          | 4,149  |
|        |             | 2      | .09          | 555   | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .70          | 4,319 | .70          | 9,681  |
|        |             | TAC    |              | 6,170 |              | 13,830 |
|        | 24,000 MT   | 1      | .21          | 1,240 | .30          | 5,430  |
|        |             | 2      | .09          | 532   | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .70          | 4,133 | .70          | 12,665 |
|        |             | TAC    |              | 5,905 |              | 18,095 |
| 4.b.   | 20,000 MT   | 1      | .21          | 1,390 | .15          | 2,007  |
|        |             | 2      | .09          | 596   | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .70          | 4,634 | .85          | 11,373 |
|        |             | TAC    |              | 6,620 |              | 13,380 |
|        | 24,000 MT   | 1      | .21          | 1,363 | .15          | 2,627  |
|        |             | 2      | .09          | 584   | 0            | 0      |
|        |             | 3      | 0            | 0     | 0            | 0      |
|        |             | 4      | .70          | 4,543 | .85          | 14,883 |
|        |             | TAC    |              | 6,490 |              | 17,510 |

<sup>1/</sup> 5Y area TACs are suggested to maintain the spawning stock at its current level of abundance.



Throughout this discussion of feasible area TACs, all 5Y area/period values are suggested with a view toward spawning stock maintenance. As such, they represent the maximum allowable harvest under various catch distribution scenarios. With an unregulated fishery in 5Y and 5Z/SA6 through June 1978, the possibility of providing for stock rebuilding in 1978 seems remote. In the event that the herring catch in 5Y through June 1978 is less than might be anticipated based upon 1977 January through May data, stock rebuilding in 5Y may be accomplished in 1978 by setting 5Y period 4 TACs which are less than the maximum allowable for zero percent stock growth. Tables 2.6.5.c. and d. give allowable catches for the 5Y fall (period 4) fishery consistent with both anticipated period 1, 2 catches and no stock growth, and it is clear that if stock increase is desired, then the period 4 TAC should be appropriately reduced. If the FMP were able to regulate catch for the entire 1978 fishing season, all area/period TACs could be reduced correspondingly to allow for some 1978 stock recovery in 5Y.

In Table 2.6.6. are summarized the feasible area/period TACs consistent with specific 5Y and 5Z/SA6 seasonal catch distributions. For each 5Y distribution option, two seasonal TAC values (rows) are presented for the various 5Y and 5Z/SA6 fisheries. The top row of TAC values is consistent with a 5Z/SA6 seasonal percent catch distribution of 15, 0, 0, 85. The bottom row is consistent with a 5Z/SA6 catch distribution of 30, 0, 0, 70. In this table two relationships are clear: (1) a catch distribution favoring the winter/spring fishery in 5Y results in higher allowable yields from 5Y, and (2) a catch distribution favoring the fall 5Z/SA6 fishery results in additional allowable catch within 5Y.

Whereas total catch has been constrained to 20,000 and 24,000 MT in this analysis, any 5Z/SA6 fall period catch is not expected to exploit the 5Y spawning stock, and, thus, TACs set for the 5Z/SA6 fall fishery are constrained only by the acceptable biological catch level set for that spawning stock. The quotas set for each area/period are designed to be flexible and responsive to the seasonal availability of fish. Quotas should be adjusted within the fishing year in the manner described earlier.

Table 2.6.6.

| Summary of Representative 5Y and 5Z Area TACs<br>Consistent with Various Distributions of Catch <sup>1/</sup><br>Within 5Y Between the Winter/Spring and Fall Fisheries |                 |      |                |       |          |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------|----------------|-------|----------|--------|
| Catch Level                                                                                                                                                             | 5Y Distribution |      | 5Y Quota       |       | 5Z Quota |        |
|                                                                                                                                                                         | Winter/Spring:  | Fall | Winter/Spring: | Fall  | Winter   | Fall   |
| 20,000                                                                                                                                                                  | 100:0           |      | 14,900         | None  | 800      | 4,300  |
|                                                                                                                                                                         |                 |      | 14,550         | None  | 1,633    | 3,800  |
|                                                                                                                                                                         | 70:30           |      | 6,790          | 2,910 | 1,545    | 8,755  |
|                                                                                                                                                                         |                 |      | 6,400          | 2,750 | 3,255    | 7,600  |
|                                                                                                                                                                         | 50:50           |      | 3,925          | 3,925 | 1,820    | 10,330 |
|                                                                                                                                                                         |                 |      | 3,700          | 3,700 | 3,780    | 8,820  |
|                                                                                                                                                                         | 30:70           |      | 1,986          | 4,634 | 2,007    | 11,373 |
|                                                                                                                                                                         |                 |      | 1,851          | 4,319 | 4,149    | 9,681  |
|                                                                                                                                                                         | 0:100           |      | 0              | 5,345 | 2,198    | 12,457 |
|                                                                                                                                                                         |                 |      | 0              | 4,950 | 4,515    | 10,535 |
|                                                                                                                                                                         |                 | 0    | 5,718          | 0     | 14,282   |        |
| 24,000                                                                                                                                                                  | 100:0           |      | 14,600         | None  | 1,410    | 7,990  |
|                                                                                                                                                                         |                 |      | 13,923         | None  | 3,023    | 7,054  |
|                                                                                                                                                                         | 70:30           |      | 6,650          | 2,850 | 2,175    | 12,325 |
|                                                                                                                                                                         |                 |      | 6,160          | 2,640 | 4,560    | 10,640 |
|                                                                                                                                                                         | 50:50           |      | 3,850          | 3,850 | 2,445    | 13,855 |
|                                                                                                                                                                         |                 |      | 3,550          | 3,550 | 5,070    | 11,830 |
|                                                                                                                                                                         | 30:70           |      | 1,947          | 4,543 | 2,627    | 14,883 |
|                                                                                                                                                                         |                 |      | 1,772          | 4,133 | 5,430    | 12,665 |
|                                                                                                                                                                         | 0:100           |      | 0              | 5,240 | 2,814    | 15,946 |
|                                                                                                                                                                         |                 |      | 0              | 4,735 | 5,780    | 13,485 |
|                                                                                                                                                                         |                 | 0    | 5,718          | 0     | 18,282   |        |

<sup>1/</sup> For each distribution of 5Y catch, two rows of values are presented. The first row is consistent with a 5Z/SA6 distribution of 15, 0, 0, .85 and the second row is consistent with a 5Z/SA6 distribution of 30, 0, 0, .70 (see text).



2.6.2.4. Maine Juvenile Fishery Considerations

As noted in Section 2.3.1.3, the ability to assess the composition, abundance and growth of the adult spawning stocks requires that the rate of fishing mortality induced on these stocks in the traditional juvenile fishery be assumed constant. As a practical matter, harvests of age 3+ fish from within the traditional juvenile fishery must be known and accounted for so as not to violate the assumptions of fishing mortality associated with adult fishery area/period TACs and spawning stock projections. Where age 3+ fish are retained in the fixed gear of the juvenile fishery, the assumption of a constant fishing mortality rate is not unreasonable; that is, catch is proportional to year class availability and abundance. However, where the catch of age 3+ fish in the juvenile fishery results from directed fishing inside State waters, then quotas on these harvests need to be established consistent with the area/period TAC analysis for the adult fishery.

The annual catch of herring within the territorial waters of the State of Maine in recent years has included 6000-8000 mt at age 3 and older herring. This represents removals of age 3+ herring within the total Maine catch of a proportion that is consistent with the achievement of the Council's objective 1. It is expected that this recommended level of harvest will be carefully reviewed by the State of Maine in light of (1) the current status of herring stocks, and (2) the manner in which age 3+ fish are harvested, and that appropriate and complementary quotas will be established in State waters. Future assessments leading to area/period TACs for the adult fishery are expected to consider catches from all relevant fisheries (adult and juvenile), and in doing so provide improved biological advice on the harvest of 3+ fish in the traditional juvenile fishery in relation to the regional utilization of sea herring resources.

2.6.3. Distributional Consequences of Alternative Area-Period TAC Options

This section elaborates upon two important implications of the preceding discussion of area/period TACs. They are:

- (1) The total economic benefits that the U.S. can derive from the 5Y herring fishery at any rate of 5Y spawning stock recovery are dependent on the seasonal distribution of domestic catches.
- (2) The distribution of economic benefits to the major user groups in the harvesting sector is sensitive to the seasonal distribution of catches.

The assessments indicate that, given certain 5Y spawning stock recovery goals, the total economic benefits from the U.S. herring fishery can only be enhanced at a reduced relative and absolute share for the purse seine operators.

2.6.3.1. Assumptions

In assessing the revenue implications of alternative area/period TACs the following assumptions were made:

- (a) A zero percent recovery for the 5Y spawning stock is sought for the fishing year 1978/79 (July 1-June 30).<sup>3</sup> This scenario is applicable to an analysis of the 1978/79 revenue implications under stock rebuilding strategies S<sub>1</sub>, S<sub>2</sub>, and S<sub>3</sub> discussed in Section 2.5.
- (b) Immediately prior to and during the spawning period, herring congregate in dense schools and thus become economically accessible to purse seines. During the overwintering period herring aggregations are more dispersed and thus are typically more readily available to trawl gear. The percent distribution of herring catches by gear types (purse seines and trawl gear) for the year 1978/79 are assumed to be as follows:

|                                   | Purse Seines | Trawl |
|-----------------------------------|--------------|-------|
| Summer-Fall (July-Nov.) Fishery   | .94          | .06   |
| Winter-Spring (Dec.-June) Fishery | .20          | .80   |

These were the relative shares in the fishing year 1978/79 which is the latest period from which complete records are available.

(c) The magnitude of the summer-fall fishery in Area 4<sup>4</sup> is not significantly impacting on the particular level of area removals in 5Y which is consistent with a given 5Y spawning recovery rate. This results form the low probability of Gulf of Maine spawning herring appearing in the summer-fall herring catches on Georges

<sup>3</sup>The biological analysis of feasible area/period TACs presented in Section 2.6.2. is in terms of the calendar year. For purposes of the assessment of distributional consequences the analysis has been recast in terms of a fishing year. The implication is that the projected TACs for the winter-spring fishery in 1978/79 (which are implicit in the annual TACs shown in Table 2.6.7.) is tentative pending an assessment of recruitment through the summer-fall fishery in 1978.

<sup>4</sup>For a geographical definition of areas see Fig. 2.5.1. in Section 2.5.1.2.

Bank. The same does not, however, hold true in the case of the winter-spring herring fishery south of Cape Cod (Area 3). As discussed in Section 2.6.2.3. it is possible to increase the catch in the 5Zw winter-spring fishery by 100 tons and still maintain a zero percent recovery of the 5Y spawning stock only if the winter-spring fishery in 5Y is reduced by 40 tons. For purposes of this analysis three alternative levels have been assumed for the Area 3 winter-spring herring catch: 1,000, 2,500 and 4,000 tons. It has been assumed that the entire catch in this fishery is harvested by trawl gear. (This has typically been the case in recent years, Table 2.6.8.).

(d) The annual catch of herring 3+ in the territorial waters of the State of Maine is between 6,000 and 8,000 tons (Ref. Sec. 2.6.2.4.).

An average ex-vessel price (of \$139.9/ton) will prevail throughout the fishing year.

Given the above assumptions the combined gross revenues from the all year Area 2 herring fishery and the winter-spring fishery in Area 3 have been forecasted for each of four options of seasonal allocations of Area 2 TACs set out in Table 2.6.7.

For any given level of catch in the Area 3 winter-spring fishery, the total herring catch in Area 2 that allows for 5Y stock removals of 7,000 tons (the zero growth requirement) decreases as the relative share of the summer-fall fishery increases. This results from the increased probability of encountering an indigenous Gulf of Maine spawning herring in the summer-fall catches from Area 2. (Sec. 2.6.1.) For example, an increase in the Area 3 winter-spring fishery of 1,500 tons requires a compensatory decrease of 700 tons under Option 1 in order to keep annual 5Y stock removals at 7,000 tons. The larger the percentage share of the summer-fall fishery, the smaller this required compensation becomes.

2.6.3.2. Predicted Revenues to Major Harvesting/Gear Groups for the Year 1978/79 Under Alternative Area/Period TACs

The revenue projections are shown in Figures 2.6.1. and 2.6.2. The detailed data are available in Tables A.5.9.-A.5.11. of Appendix 5. Given the requirement of an unchanged 5Y spawning stock size during the year 1978/79, and assuming a 2,500 ton catch in the Area 3 winter-spring fishery, the combined gross revenues to the harvesting sector from herring fishing in Areas 2 and 3 will decline from \$2.35 million to \$1.27 million as the percent Area 2 catch taken in the summer-fall period increases from 0 to 70 (Fig. 2.6.1.).

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Table 2.6.7.

Total Annual Allowable Levels of Adult Herring Catches in Area 2 Under Alternative Levels of Catch in the Area 3 Winter-Spring Fishery and Under Four Alternative Options for Seasonal Allocation of the Gulf of Maine (Area 2) Adult Herring Catches That Will Provide for 0 Percent Growth in the 5Y Spawning Stock During the Fishing Year 1978/79

| Option <sup>2/</sup> | Percent of Annual Herring Catch in Area 2 Harvested During: |               | Total Allowable Adult Herring Catches in the Gulf of Maine (Area 2) Under Alternative Levels of Catch in the Area 3 Winter-Spring Fishery <sup>1/</sup> |            |            |
|----------------------|-------------------------------------------------------------|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|
|                      | Summer-Fall                                                 | Winter-Spring | 1,000 tons                                                                                                                                              | 2,500 tons | 4,000 tons |
| 1                    | 0                                                           | 100           | 15,000                                                                                                                                                  | 14,300     | 13,600     |
| 2                    | 30                                                          | 70            | 9,950                                                                                                                                                   | 9,500      | 9,050      |
| 3                    | 55                                                          | 45            | 7,750                                                                                                                                                   | 7,400      | 7,050      |
| 4                    | 70                                                          | 30            | 6,850                                                                                                                                                   | 6,550      | 6,250      |

- 1/ These catch levels were generated by the biological model presented in Section 2.6.1.
- 2/ Options 1, 2, 3 and 4 discussed here are referred to as Options 2, 3, 1 and 4 respectively in Section 2.6.2.3.



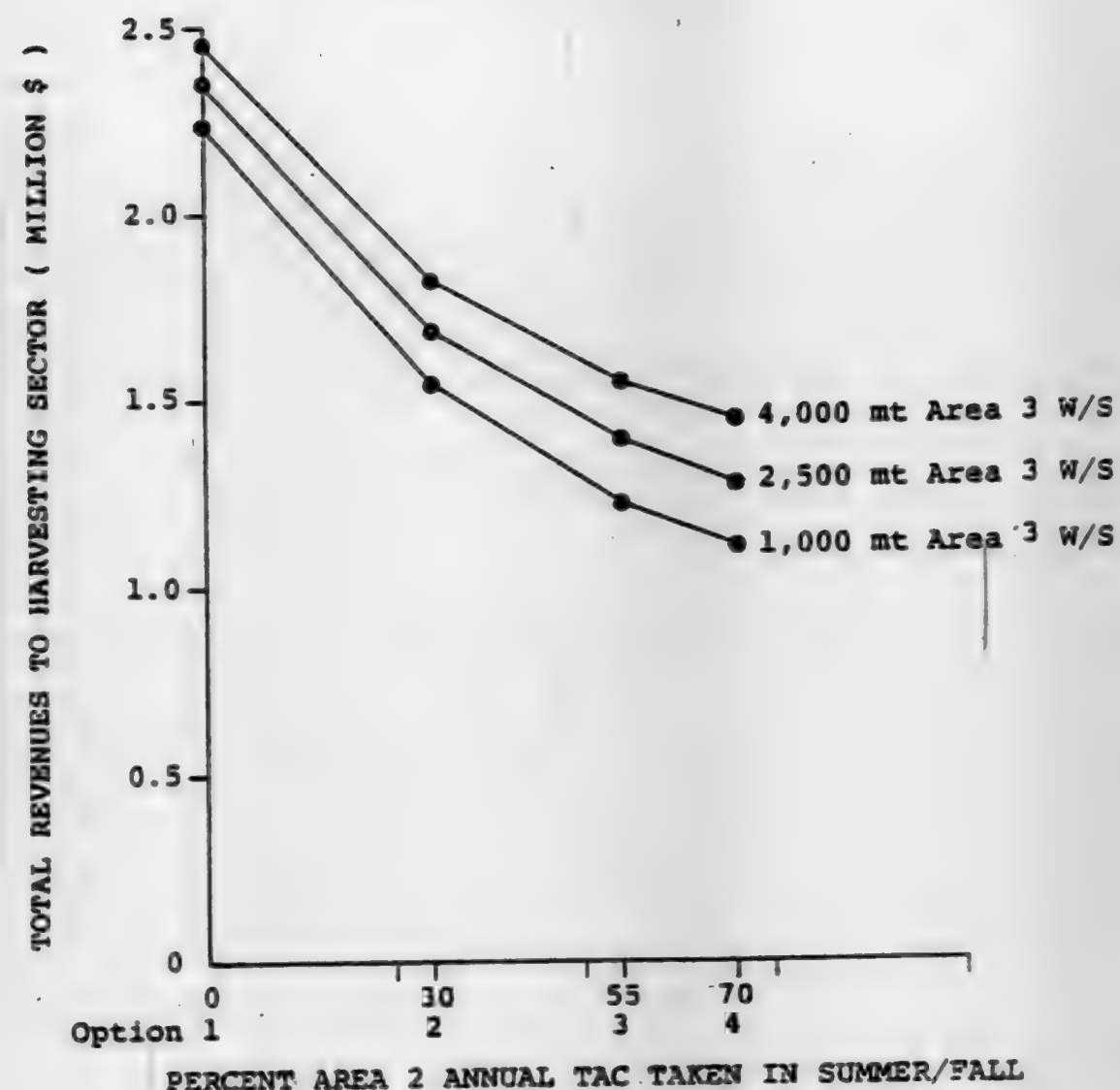


Figure 2.6.1. Total revenues to harvesting sector from herring fishing in Area 2 (all year) and Area 3 (Winter/Spring) as a function of the percent allocation of the Area 2 annual quota to the Summer/Fall season under alternate assumptions of catch levels in the Area 3 Winter/Spring fishery.

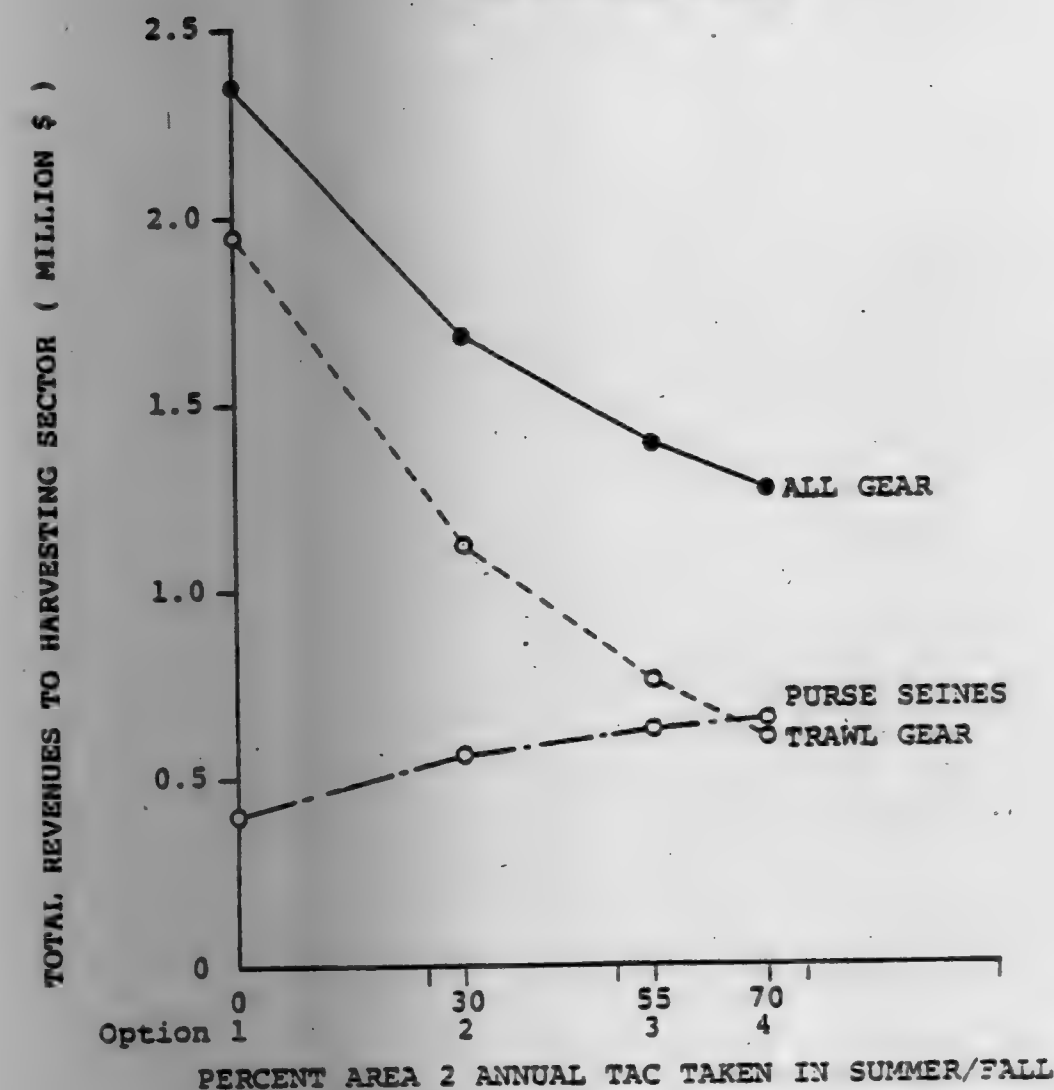


Figure 2.6.2. Total revenues to harvesting sector and major gear types from herring fishing in Area 2 (all year) and Area 3 (Winter/Spring) as a function of the percent allocation of the Area 2 annual quota to the Summer/Fall season under the assumption of a 2,500 mt catch in the Area 3 Winter/Spring fishery.



It is also apparent that the distribution of total gross revenues from the fishery between harvesting groups is sensitive to the seasonal TACs. For example, assuming a 2500 ton catch in the Area 3 winter-spring fishery, purse seines and trawl gear which share equally in gross revenues from herring fishing in Areas 2 and 3 if approximately two-thirds of the annual Area 2 herring TAC was reserved for the summer-fall fishery. Anything less than two-thirds will increase the share of pair trawls relative to that of purse seines (Fig. 2.6.2.). It needs emphasizing that this conclusion is only valid under the particular assumptions made above with respect to the relative shares of major gear types in the seasonal herring catches.

As a point of reference for assessing the distributional consequences of alternative area/period TACs, it should be noted (Table 2.6.8.) that the relative shares of pair trawls and purse seines in total annual gross revenues from herring fishing have averaged .65/.35 for the last two years (.52/.48 for 1976/77 and .72/.28 (pred.) for 1977/78.). It will be apparent from Figure 2.6.2. that the relative shares of revenues expected to be generated through option 2 closely matches the historical .65/.35 ratio.

The predicted changes in 1978/79 gross revenues to major gear groups from herring fishing in Areas 2 and 3 relative to the average levels in the last two years are shown in Table 2.6.9. Assuming a total 2,500 ton catch in the winter-spring fishery in Area 3 the predicted change in gross revenues to purse seines ranges from -.55 to -.27 percent depending on the selected period TAC in Area 2. The corresponding changes for pair trawls are +.18 and -.63 percent.

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Table 2.6.8.

Recent Catches and Landed Value of Adult Herring in Areas 2 and 3 By Major Season and Gear Type

| Year/Season        | Area 2       |              |                         |              | Area 3       |              |                         |              | Area 2 and Area 3       |              |                         |              |
|--------------------|--------------|--------------|-------------------------|--------------|--------------|--------------|-------------------------|--------------|-------------------------|--------------|-------------------------|--------------|
|                    | Catch (tons) |              | Landed Value (1,000 \$) |              | Catch (tons) |              | Landed Value (1,000 \$) |              | Landed Value (1,000 \$) |              | Landed Value (1,000 \$) |              |
|                    | All Gear     | Purse Seines | All Gear                | Purse Seines | All Gear     | Purse Seines | All Gear                | Purse Seines | All Gear                | Purse Seines | All Gear                | Purse Seines |
| 1976/77            |              |              |                         |              |              |              |                         |              |                         |              |                         |              |
| Summer-Fall        | 8636         | 8161         | 475                     | 701          | 56           | 56           | 4                       | 4            | 705                     | 672          | 33                      | 33           |
| Winter-Spring      | 13675        | 2697         | 10978                   | 1063         | 425          | 425          | 31                      | 31           | 1094                    | 194          | 900                     | 900          |
| All Year           | 22311        | 10858        | 11453                   | 1764         | 481          | 56           | 35                      | 4            | 1799                    | 866          | 933                     | 933          |
| 1977/78            |              |              |                         |              |              |              |                         |              |                         |              |                         |              |
| Summer-Fall        | 4544         | 4398         | 146                     | 458          | 2            | 2            | --                      | --           | 458                     | 443          | 15                      | 15           |
| Winter-Spring      | 8016         | 47           | 7969                    | 1099         | 1527         | 1527         | 214                     | --           | 214                     | 1314         | 7                       | 7            |
| Mar.-Jun. (pred.)  | 9610         | 3431         | 6179                    | 1344         | 1383         | 1383         | 193                     | --           | 193                     | 1537         | 480                     | 1057         |
| All Season (pred.) | 17626        | 3478         | 14148                   | 2444         | 2910         | 2910         | 407                     | --           | 407                     | 2851         | 487                     | 2364         |
| All Year (pred.)   | 22170        | 7876         | 14294                   | 2902         | 2912         | 2            | 407                     | --           | 407                     | 3309         | 930                     | 2379         |

1/ Estimated based on relative shares of herring landings by purse seines and pair trawls in the summer-fall fishery in 1976.

2/ Estimated based on relative shares of herring landings by purse seines and pair trawls during the months of December 1976 to February 1977.

3/ Predicted based on formula Catch Mar.-June 1978 = Catch Mar.-June 1977 x Catch Dec.-Feb. Catch Dec.-Feb.

4/ Reported monthly Massachusetts landed values per ton of herring (regardless of gear) have been applied towards purse seines and pair trawl catches.

5/ The average ex-vessel price of \$139.9 in February is assumed to hold for the remainder of the winter-spring fishery in 1978.

Sources: NMFS, Unpublished Data  
NMFS, Current Fishery Statistics, Massachusetts Landings, Annual Summary 1976, Monthly 1977.



Table 2.6.9.

<sup>1/</sup>  
 Predicted Changes in Gross Revenues from Herring Fishing in Areas 2 and 3 to Harvesting Groups in 1978/79 Under Alternative Options for Seasonal Allocation of the Annual Area 2 TAC and Three Different Levels of Catch in the Area 3 Winter-Spring Fishery

| Seasonal TAC<br>Option | Assumed Level of Herring Catch in the<br>Area 3 Winter-Spring Fishery |                |                 |                |                 |                |
|------------------------|-----------------------------------------------------------------------|----------------|-----------------|----------------|-----------------|----------------|
|                        | 1,000 tons                                                            |                | 2,500 tons      |                | 4,000 tons      |                |
|                        | Purse<br>Seines                                                       | Pair<br>Trawls | Purse<br>Seines | Pair<br>Trawls | Purse<br>Seines | Pair<br>Trawls |
| 1                      | -53%                                                                  | 10%            | -55%            | 18%            | -58%            | 26%            |
| 2                      | -35%                                                                  | -43%           | -38%            | -32%           | -41%            | -22%           |
| 3                      | -27%                                                                  | -66%           | -30%            | -54%           | -33%            | -43%           |
| 4                      | -23%                                                                  | -75%           | -27%            | -63%           | -30%            | -51%           |

<sup>1/</sup> All revenue changes are measured relative to the average annual gross revenues from herring fishing in Areas 2 and 3 for the two gear groups in the years 1976/77 and 1977/78. The gross revenues for these years are shown in Table 2.6.8. The predicted gross revenues for the period 1978/79 are shown in Table A.5.11. of Appendix 5.

<sup>2/</sup> The options are defined in Table 2.6.7.

The above predictions have not explicitly considered the implications of the development of a summer-fall fishery on Georges Bank. A limited number of larger vessels currently participating in the herring fishery in Areas 2 and 3 have the capacity for fishing the herring grounds in the Cultivator Shoals area and further eastward on the Bank. Development of the hitherto practically nonexistent domestic herring fisheries in these areas will tend to ameliorate the negative impacts projected in Table 2.6.9.

#### 2.6.3.3. Policy Implications

The biological analysis of feasible area/period TACs was presented in Sections 2.6.1. and 2.6.2. A major conclusion was that the total annual allowable harvest of adult herring in the Gulf of Maine that is consistent with a given goal of rebuilding the Gulf of Maine spawning stock is a function of the seasonal distribution of the area TAC. It is also dependent on the level of herring catches in the winter-spring fishery south of Cape Cod and off Rhode Island. These observations served as the point of departure for an assessment of the revenue implications for the major vessel/gear groups in the fishery of alternative options during 1978/79 for seasonal allocations of the Gulf of Maine adult herring area TAC.

The conditional gross revenue forecasts presented in Sec. 2.6.3.2. suggest that a policy of maximizing the gross benefits to the harvesting sector from herring fishing in Areas 2 and 3 within some stock growth constraint can only be pursued at the expense of reduced gross earnings to purse seines. This trade off or negative rate of transformation between total gross revenues from herring fishing and gross revenues to purse seines is illustrated by the downward sloping line in Fig. 2.6.3.b. The transformation ratio -.24 (line B2 divided by A2) implies that, for every increase of \$100 in total herring gross revenues to the harvesting sector brought about by a shift of the annual Area 2 TAC towards the winter-spring season, purse seines will experience a decline of \$24 in gross revenues from herring fishing. The transformation ratio for total gross revenues and gross revenues to trawl gear is 1.24 (Fig. 2.6.3.a.).



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Figure 2.6.3.A.

Transformation Ratio Between Total Gross Revenues From Herring Fishing to Harvesting Sector and Gross Revenues From Herring Fishing to Pair Trawlers

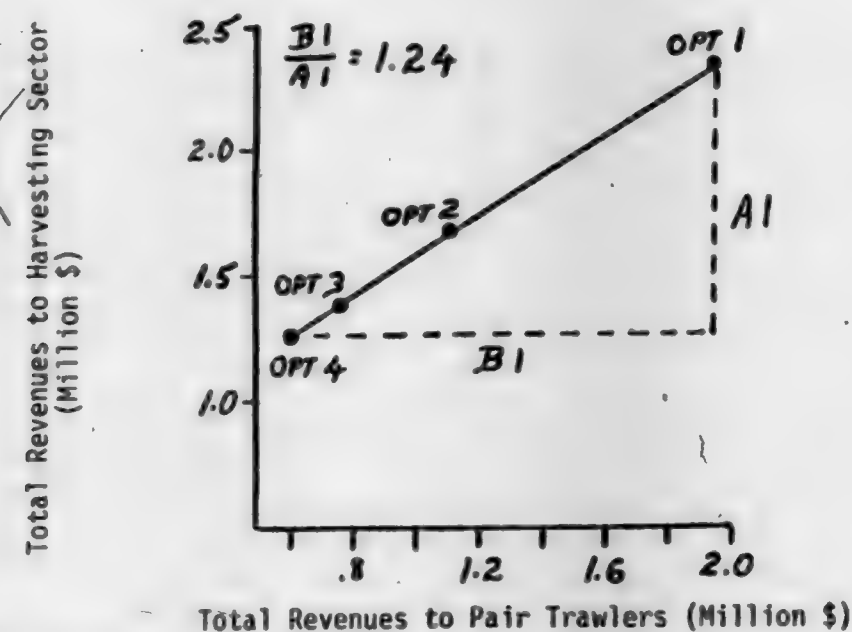
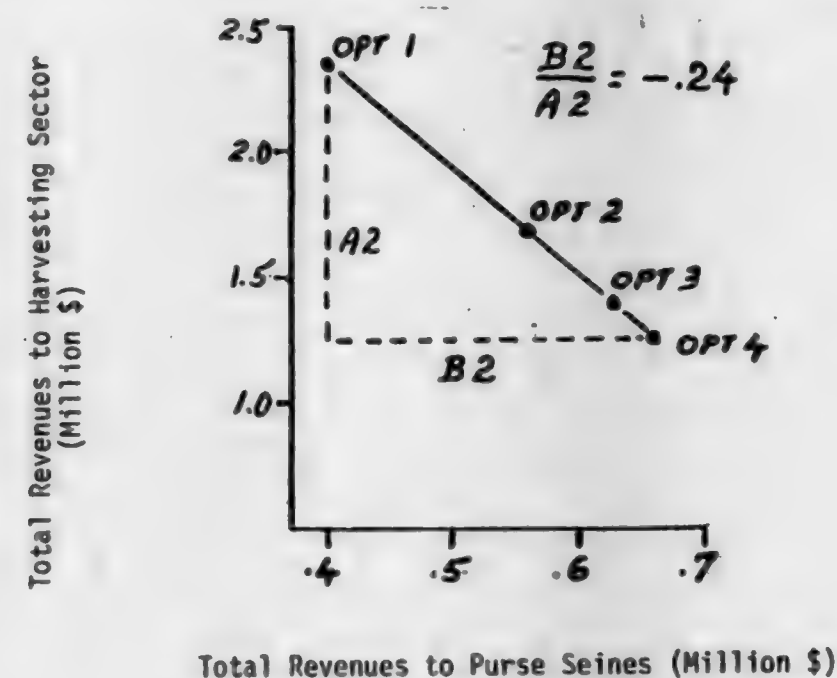


Figure 2.6.3.B.

Transformation Ratio Between Total Gross Revenues From Herring Fishing to Harvesting Sector and Gross Revenues From Herring Fishing to Purse Seiners



The transformation ratios shown in Fig. 2.6.3. will change in response to changes in the relative shares of the major gear types in the total herring catches during the respective seasons. In particular, it should be noted that increased participation by purse seines in the winter fisheries in Areas 2 and 3 will lessen the reduction in gross revenues to purse seines associated with an increase in the total gross revenues to the harvesting sector that is made possible from the shift of seasonal Area 2 TACs in favor of the winter-spring fishery.

## FINAL

## ATLANTIC HERRING FISHERY MANAGEMENT PLAN

## PART 3—DETERMINATION OF OPTIMUM YIELD AND PLAN PROVISIONS

## 3.0. Determination of Optimum Yield and Plan Provisions

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## 3.0. Determination of Optimum Yield and Plan Provisions

## 3.1. Introduction

The determination of optimum yield has both intertemporal and intratemporal components (Section 1.5). An intertemporal strategy to rebuild the stock is established by objective 1 of the FMP. When to begin stock rebuilding is an investment decision and must be evaluated for several initiation options. Section 2.5. of this FMP has provided the Council with an analytical basis for selecting an intertemporal strategy for stock rebuilding consistent with the stated management objectives. This strategy is detailed in Sect. 3.2.1.

Within a given year, the annual allowable harvests that are consistent with stock maintenance/recovery goals are themselves functions of the spatial and seasonal distribution of catch within an exploitation area (Sect. 2.6.2.). As such, these distributions impact on the allocation of benefits to individual user-groups. Intratemporal strategies determine optimum yields for the fishing year 1978/1979 and allocations of these optimum yields by season. In selecting a strategy, the distribution of benefits to various user-groups must be considered. Section 2.6.

of this FMP has provided the analytical basis for establishing optimum yields for adult herring in fishing year 1978/1979, which are detailed in Sections 3.2.2. and 3.2.3.

The determination of optimum yields for the adult herring fishery in exploitation areas 5Y and 5Z/SA6 has been made with the assumption (Section 1.1.2.) that the management unit as defined will be retained under U.S. management jurisdiction. As such, area optimum yields do not include explicit considerations of possible allocations of the herring resources to Canada. The Council recognized that management authority over and allocative rights to the Georges Bank herring resource is currently the subject of negotiations between the U.S. and Canada. Because of the current poor status of the 5Y herring spawning stock, no Canadian allocation of the herring resources in that area is expected. A Canadian allocation of the 5Z/SA6 herring resource, which may result from the negotiation process, is not expected to exceed 10% of the optimum yield which has been determined for that area. This Canadian allocation could be accommodated in the FMP by increasing the 5Z/SA6 area OY accordingly. The magnitude of the resulting increase in optimum yield is not likely to jeopardize 5Z/SA6 herring spawning stock rebuilding, thereby continuing to allow for an expected spawning stock increase in excess of 15%.

Other measures and conditions appropriate to the effective management of adult herring resources under the jurisdiction of the FCMA are detailed in Sect. 3.3.

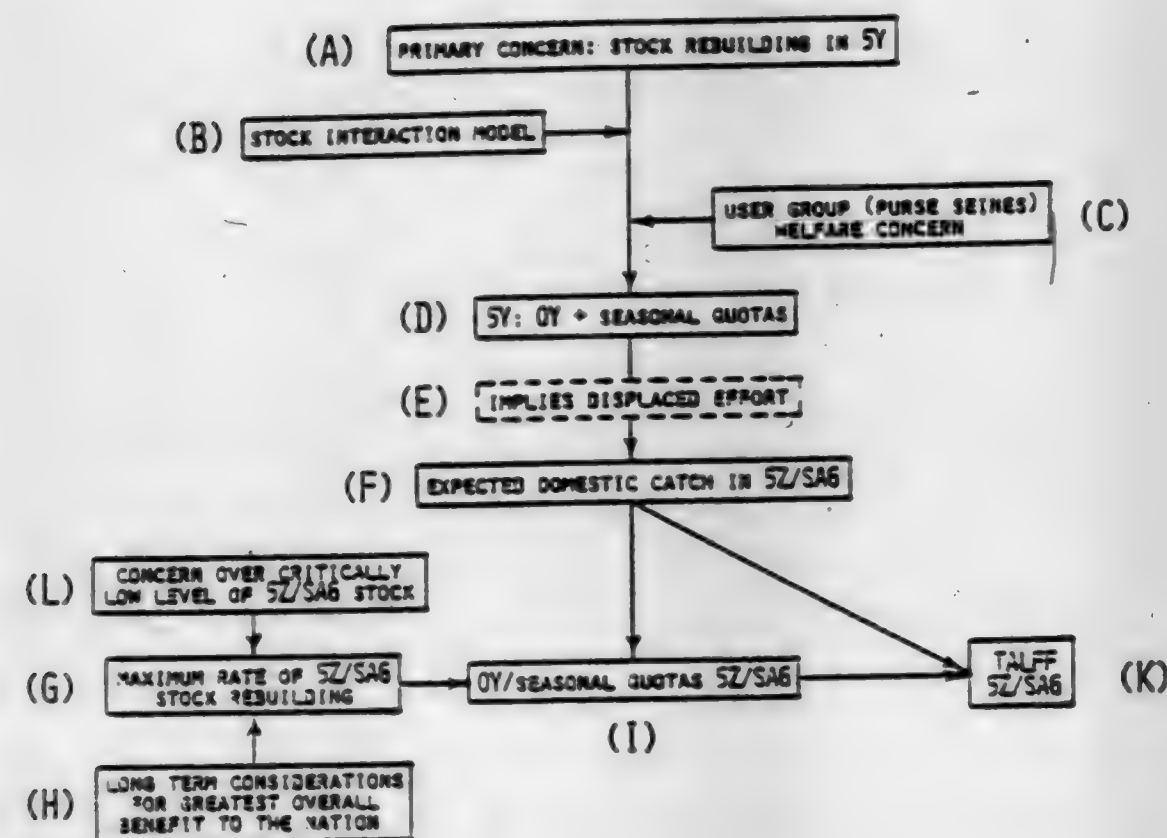
## 3.2. Determination of Optimum Yield and Area/Period TACs

A conceptual overview of the relationships between management concerns/objectives and major plan provisions is set out in Figure 3.2. Throughout the discussion below of optimum yields, seasonal/area TACs and total allowable level of foreign fishing, reference will be made to individual components in this structure.



[3510-22-C]

Figure 3.2. Schematic illustration of objectives - Major plan provisions.



### 3.2.1. Intertemporal Considerations: Stock Rebuilding

Due to the unregulated fishery for adult herring in 5Y between January and June 1978, it is not feasible to set 5Y adult herring quotas for the fall consistent with spawning stock rebuilding in this calendar year. Quotas consistent with 5Y stock rebuilding in any calendar year will require substantial reductions in allowable 5Y adult herring catches compared to recent years (Block A in Figure 3.2.). The short-run adverse economic impact resulting from adult herring catch restrictions in 5Y (Block C in Figure 3.2.) are expected to be mitigated by increased harvests in 5Z/SA6, particularly during the summer/fall period. However, U.S. vessels are currently not fully capable of fishing in the distant waters of Georges Bank (5Ze), and it is anticipated that the focus of the adult herring fishery will not be able to shift from 5Y to this area until calendar year 1980. Given the above considerations, the Council has determined that the rebuilding of the Gulf of Maine (5Y) herring spawning stock shall begin in 1980 (Block D in Figure 3.2.).

The commitment to initiate rebuilding of the Gulf of Maine spawning stock in 1980 may be re-evaluated and postponed for one year to permit fishing in 5Y at a maximum harvest compatible with current stock assessments if the current assessment and recruitment data for the Georges Bank and

southern New England stock indicate a stock size that could not support a viable commercial fishery in the 5Z/SA6 area. A decision to postpone rebuilding of the Gulf of Maine spawning stock shall be re-assessed after one year, taking into account all relevant assessment data on the Gulf of Maine stock and the stocks in areas other than the Gulf of Maine.

The Council agrees that the adult herring fishing year, for management purposes, shall commence on July 1 rather than January 1. In this manner, seasonal quotas for the 1978/1979 adult herring fishery in 5Y will be set to maintain the 5Y spawning stock without further decline (Block D in Figure 3.2.). The OYs and seasonal quotas for the 1979/1980 fishing year will be set to achieve stock rebuilding, focusing primarily on allowable catches from the winter/spring period. These quotas, appropriate for stock rebuilding in calendar year 1980, shall be set as soon as assessment and recruitment data necessary for reliable estimates of allowable catches are available.

The Council considers rapid restoration of the 5Z/SA6 herring stock from its present critically low level necessary and desirable (Blocks L and G in Figure 3.2.). The strategy for recovery of this stock, however, needs to be synchronized with that of the 5Y stock; the expected domestic catch in 5Z/SA6 is particularly dependent on the total harvesting restrictions imposed on the 5Y fishery (Blocks D, E, F in Figure 3.2.).

### 3.2.2. Seasonal Catch Distribution in the 5Y Adult Herring Fishery

Presently available information with regard to sea herring stock overlap, provided by results of scientific studies (particularly the International Herring Tagging Program) and interpreted by the herring stock distribution model (see Sect. 2.6.), has been carefully considered and analyzed by the NEFMC (Block B in Figure 3.2.). A major conclusion is that the total annual allowable harvest of adult herring in the Gulf of Maine, consistent with a given goal of 5Y spawning stock rebuilding, increases as the emphasis of the fishery is shifted from the summer-fall to the winter-spring season. The Council recognizes that such a seasonal shift would adversely impact on the fall purse seine fishery (Section 2.6.3.) but notes that the herring fishery as a whole is highly dynamic and that recent trends in seasonal catches within area 5Y have reflected an increasing emphasis on the winter/spring fishery. The Council does not, however, wish to impose an immediate undue hardship upon the area 5Y fall purse seine fishery (Block C in Figure 3.2.), and thus recommends that the distribution of allowable 5Y adult herring catch during the fishing year 1978/1979 reflect a winter-spring/summer-fall catch distribution of 50:50.

### 3.2.3. Optimum Yield Area/Period TACs

The expected domestic catches, the recommended OYs, TALFFs and seasonal quotas by management areas are shown in Table 3.2.3.



[3510-22-C]

Table 3.2.3.

OYs, TALFFS AND SEASONAL QUOTAS RECOMMENDED FOR THE FISHING YEAR 1978/1979

|                                                  | 5Y*      | 5Z/SA6    | All Areas |
|--------------------------------------------------|----------|-----------|-----------|
| Optimum Yield (OY)                               | 8,000 MT | 10,000 MT | 18,000 MT |
| Expected Domestic Catch (EDC)                    | 8,000 MT | 10,000 MT | 18,000 MT |
| Total Allowable Level of Foreign Fishing (TALFF) | 0        | 0         | 0         |
| <u>Seasonal Quotas</u>                           |          |           |           |
| July-November, 1978                              | 4,000 MT | 7,500 MT  | 11,500 MT |
| December, 1978-June, 1979                        | 4,000 MT | 2,500 MT  | 6,500 MT  |

\* Excludes Maine territorial waters.

**3.2.3.1. Total Allowable Catch in 5Y for 1978/1979**

Optimum yield for the herring (age 3+) fishery in 5Y for 1978/1979 is identical to the particular TAC associated with the selected strategy for rebuilding. As such, the 5Y area OY is set at 8,000 metric tons.

Consistent with the discussion in 3.2.2., seasonal quotas for the harvest of herring (age 3+) in the adult fishery from exploitation area 5Y (exclusive of the State of Maine) during the fishing year 1978/1979 are 4,000 MT for the period July-November, 1978, and 4,000 MT for the period December, 1978-June, 1979. The quota for the December-June, winter/spring 1978/1979 5Y fishery is subject to some revision pending updated stock assessments of the herring resource through mid-year 1978. Moreover, the winter/spring 1978/1979 quota is in part, subject to expected harvests in the 5Zw winter fishery south of Cape Cod.

**3.2.3.2. Total Allowable Catch in 5Z/SA6 for 1978/1979**

Optimum yield for the herring (age 3+) fishery in 5Z/SA6 for 1978/1979 reflects the Council's concern for achieving the highest possible stock recovery rates consistent with a level of fishing that will accommodate the expected domestic catch of herring (age 3+) in the management area. The expected domestic catch in 5Z/SA6, under conditions of a 8,000 MT OY in 5Y, has been determined as 10,000 MT, following the general considerations for EDC assessments expressed in Sec. 2.4.3. In consequence, the 5Z/SA6 OY is set at 10,000 MT.

Consistent with the EDC assessments for alternative fishing areas (Table 2.4.1.) and given the recommended 5Y seasonal quotas, the seasonal quotas for the harvest of herring (Age 3+) from exploitation area 5Z/SA6 during the fishing year 1978/1979 are 7,500 MT for the period July-November, 1978 and 2,500 MT for the period December, 1978-June, 1979.

**3.2.3.3. Provision for Within-Plan Adjustment in Area/Period TACs**

The analytical model for establishing area/period TACs provides the Council with the flexibility for making seasonal quota adjustments in response to (1) unexpected seasonal patterns of herring availability by area, and (2) updated stock assessments. The mechanism for making these adjustments, including a hypothetical example, is detailed in Sect. 2.6.2.3. To the extent that within-plan changes in area/period TACs are made, the annual Optimum Yields by management area will be adjusted. The anticipated range of such adjustments in area OYs is within 10-15%, plus or minus, of the recommended levels. As long as such adjustments are constrained by acceptable levels or removals from the 5Y spawning stock, they do not represent departures from the biological stock objectives. Rather, they properly reflect seasonal variations in herring availability by geographical area.

**3.2.3.4. The Total Allowable Levels of Foreign Fishing**

The annual expected domestic catch of herring in the 5Y area under a no plan situation exceeds the OY determined for this fishery in the fishing year 1978/79. Consequently, there is no surplus available for allocation to foreign states. Since it has been demonstrated in the past years that U.S. herring catches in 5Y have been at or exceeded the long-term average yield in the fishery, it is not foreseen that there will be any surplus available to foreign states as re-

building of the 5Y spawning stock is achieved.

The TALFF for herring in the 5Z/SA6 area for the fishing year 1978/79 has been determined to be zero (Block K in Figure 3.2.). This results from the Council's intent to secure a maximum rate of stock recovery in 1978/79 (Block G in Figure 3.2.), given that the expected domestic catch for herring in the area is to be accommodated within the OY (Block F in Figure 3.2.).

The maximum recovery rate reflects the attempt to increase the 5Z/SA6 spawning stock from its present, critically low level as soon as possible. Furthermore, the Council has determined that, by restricting the 1978/79 OY to the expected domestic catch levels and thereby making herring in 5Z/SA6 more abundant and available to domestic fishermen in future years, its actions are consistent in the long run with the goal of providing the greatest overall benefit to the nation from the fishery (Block H in Figure 3.2.).

Similar considerations should govern the determination of the future availability of foreign surpluses. The Council wishes to stress that indications of a future positive TALFF for herring in 5Z/SA6 are expected to impact adversely on the investment in the development of an increased capacity to harvest herring by a domestic fishery during the fall period on Georges Bank. Such an expansion is desirable to relieve the pressure on the 5Y stock.

Furthermore, the Council feels that the determination of future TALFFs for herring should reflect an improved understanding of (a) the migratory and reproductive interrelationships between the various herring stocks and (b) the relationship between herring abundance and the relative abundance of other commercial/recreational species of regional importance.

**3.3. Other Measures and Conditions Specified by the Plan**

The FCMA specifies two mandatory management instruments in the overall management strategy for attainment of stated management objectives, a total annual catch limitation (TAC) and a total allowable level of foreign fishing (TALFF). These have been addressed in an earlier section (3.2.3.).

Additionally, certain discretionary management instruments may be appropriate for implementation of the management strategy. Those discretionary management instruments which the Council believes to be appropriate to the adult sea herring resource within the jurisdiction of the FCMA are defined below.

**3.3.1. Time/Area Spawning Closures**

The Council, while observing in principle the desirability of establishing closed seasons/areas to protect spawning aggregations, anticipates that the summer-fall 1978 seasonal quota in area 5Y probably will be taken prior to the spawning season. In a practical sense, therefore, no further action will be required in 1978/1979 to protect spawning fish in 5Y.

With regard to spawning sites in area 5Z, it is clear that the current, limited capability of the U.S. fishing fleet to exploit Georges Bank spawning aggregations makes it unnecessary to establish season/area closures during the fishing year 1978/1979.

The Council is concerned, however, that all spawning sites for sea herring within the FCZ be identified on a continuing basis and that definition of spawning season/area clo-

tures be reserved for possible future implementation.

**3.3.2. Minimum Size Limitation: Adult Fishery**

For various reasons, a minimum size limitation (9 inches) was imposed by ICNAF on the adult sea herring fishery. To the extent that a similar measure would constitute a sound conservation practice, the Council is agreeable to its establishment. However, in view of uncertainties associated with expressing attainment of sexual maturity in terms of size or length of fish, the Council has elected to forego establishment of a minimum size at this time.

The Council recommends that additional research be initiated for determination of the size at sexual maturity in sea herring. Moreover, the Council will consider reimplementation of a minimum size should it become clear from monitoring of fishing practices that the mortality of juvenile fish in the adult fishery exceeds expected levels.

**3.3.3. Discarding at Sea**

The Council is adamant that no deliberate discarding be permitted in the domestic regulated adult herring fishery within the FCZ.

**3.3.4. Regulatory Conditions****3.3.4.1. Cooperative Management Within Territorial Seas**

The Council recognizes the traditional juvenile herring fishery within the territorial seas of the State of Maine and further recognizes that an annual, aggregated average catch of 6,000-8,000 MT of age 3 and older herring have in recent years been incorporated within the juvenile catch. Insofar as such catches of age 3+ herring are a reflection of year class abundances, and are not the result of a directed fishery of the proportions that would impede the achievement of the Council's objective 1, the catches of adult herring need not be explicitly counted against the TAC for age 3+ herring, but may be implicitly discounted in the stock assessment without violating the assumptions of that assessment. Under these conditions, the Council considers the territorial seas of the State of Maine to be a distinct management entity within exploitation area 5Y. The Council understands that the State of Maine will take appropriate measures to manage the age 3+ herring resource within its State waters consistent with the Council's regional management objectives. (See Sec. 2.6.2.4. for further discussion). Maine's management authority is described in Appendix 6 and its management plan in Appendix 7.

The Council is aware that the bulk of the U.S. catch of adult sea herring has historically been taken within 12 nautical miles from the shore and, moreover, takes the position that proper management of the herring resource would ensure its continued availability within coastal waters. Effective regional herring management, therefore, is critically dependent upon the cooperation of the coastal states' management agencies.

Accordingly, the Council requests that the directors of the respective coastal states' management agencies communicate to the Council their plans for cooperative management of the sea herring resource.

Additionally, the Council requests that the coastal states make catch statistics relative to their respective sea herring fisheries available to the Council in a form deemed mutually acceptable.

The Council anticipates that appropriate management regulations consistent with



this plan will be implemented in each state. The fishery management authority of the five New England states is outlined in Appendix 6.

#### 3.3.4.2. Permits and Fees

The Council recommends that the following additional regulatory measures be applied to the adult herring fishery within the FCZ. (a) Any owner or operator of a vessel desiring to take any sea herring within the FCZ; or to transport or deliver for sale sea herring taken within the FCZ, must obtain a license for that purpose. The owner or operator of a vessel may obtain the appropriate license by furnishing, on the application form provided by the National Marine Fisheries Service, information including the names and addresses of the vessel owner and master, the name of the vessel, official number, directed fishery or fisheries, gear type or types utilized to take herring, gross tonnage of vessel, crew size including captain, fish hold capacity (to the nearest 100 pounds), and the home port of the vessel. The registration form shall be submitted, in duplicate, to the Regional Director, National Marine Fisheries Service, Gloucester, Massachusetts 01930, who shall issue the required license, for an indefinite term; such term to include the calendar year in which the license is issued. A license shall expire whenever vessel ownership changes, or whenever there is a substantial change in any of the information contained in the application. Application for a new license, because of a change in vessel ownership, shall include the names and addresses of both the purchaser and the seller and be submitted by the purchaser.

The license issued by the National Marine Fisheries Service must be carried, at all times, on board the vessel for which it is issued, mounted clearly in the pilothouse of such vessel, and such license, the vessel, its gear and equipment, and catch shall be subject to inspection at reasonable times, by an authorized official.

Licenses issued under this part may be revoked by the Assistant Administrator for violations of this part.

(b) Each fishing vessel shall display its official number on the deckhouse or hull and on an appropriate weather deck. The identifying markings shall be affixed and shall be of the size and style established by the National Marine Fisheries Service.

A fishing vessel is here defined as any boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for, fishing, except a scientific research vessel.

#### 3.3.4.3. Management Costs

A limited increase in government costs is anticipated as a result of the implementation of the Herring FMP. This will be due primarily to the initial costs incurred from implementing management regulations and procedures for the domestic herring fishery; specifically, from issuing the required permits, processing the data supplied by vessel logbooks and processor records, and additional enforcement activities by the Coast Guard and the National Marine Fisheries Service.

#### 3.3.4.4. Specifications of Requirements for Fishery Data

The Council recognizes that management decisions must be based on a sound scientific body of information. To this end, the acquisition of adequate fishery data is of primary importance. The following are generally described reporting requirements the

Council deems necessary to the management of the adult herring fishery within the FCZ. The Council anticipates that specific reporting requirements will be formulated in the implementing regulations.

(a) **Herring Tagging:** The Council wishes to encourage research efforts designed to provide critical information on stock definition and seasonal migratory behavior of sea herring. In particular, the Council recommends that international herring tagging efforts be continued for the foreseeable future.

(b) **Domestic Fishermen:** In the case of a licensed vessel taking herring, either directly or incidentally, the owner or master of such vessel will be required to maintain an accurate log of fishing operations showing at least: (1) type, size, and quantity of gear used, (2) areas fished, duration of fishing time, length of tow and number of hauls where appropriate, and (3) estimated weight in pounds of each species taken for those tows in which herring were taken. Such logbooks will be available for inspection by any authorized official of the National Marine Fisheries Service, and will be presented for examination, and subsequent return to the owner or master of the vessel, upon proper demand by such authorized official at any time during or at the completion of a fishing trip. Such required documentation will be maintained by the owner or master of the vessel at least one year subsequent to the date of the last entry in the logbook. All logbooks will be submitted to an authorized official of the National Marine Fisheries Service.

All data received under this section will be kept strictly confidential and will be released in aggregate statistical form only, without individual identification as to its source.

(c) **Processors:** All persons, individuals, firms, corporations, or business associations, at any port or place in the United States that buys and/or receives herring from U.S. flag vessels, will keep accurate records of all transactions involving herring on forms supplied by the Regional Director, National Marine Fisheries Service. Records will show the name of vessel or common carrier from which herring was received, the date of the transaction, the amount of herring received, and the price paid.

The possession by any person, firm or corporation of herring which such person, firm, or corporation knows to have been taken by a vessel of the United States without a valid license is prohibited. In addition, all persons, individuals, firms, corporations, or business associations which process herring in any manner whatsoever, shall keep accurate records of all transactions involving herring. Such records will show the name of the entity from whom the herring was received, date of transaction, amount of herring received, and price paid.

#### 3.4. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

##### 3.4.1. Fishery Management Plans

Preliminary Fishery Management Plans (PMPs) for five fisheries of the northwest Atlantic were implemented on March 1, 1977, by the U.S. Department of Commerce. These PMPs presently regulate foreign fishing within the FCZ for Atlantic herring, Atlantic mackerel, silver and red hake, squid (*Loligo* and *Illex*) and finfish caught incidentally to trawling. The Council has prepared a Fishery Management Plan (FMP)

for the Atlantic Groundfish fishery. Regulations promulgated by the Secretary of Commerce imposing quotas, minimum size limits, mesh restrictions, etc., went into effect on June 13, 1977, and have been subsequently amended to apply to the fisheries during 1978. The Mid-Atlantic Fishery Management Council has prepared a FMP for the Atlantic Surf Clam fishery. Regulations imposing a moratorium on new vessels, catch quotas, and other harvesting restrictions are in effect. Plans for several other species are also in various stages of preparation by the New England and Mid-Atlantic Fishery Management Councils.

This Atlantic Herring Fishery Management Plan, prepared by the New England Fishery Management Council, is related to these other plans as follows:

(1) This Atlantic Herring FMP will replace the Preliminary Management Plan for the Atlantic Herring Fishery of the North-western Atlantic that is in place now. In the PMP, the Department of Commerce stated that it anticipates that the New England Council will recommend appropriate changes in the development of its fishery management plan.

(2) All fisheries of the northwest Atlantic are part of the same general geophysical, biological, social and economic setting. Domestic and foreign fishing fleets, fishermen, and gear often are active in more than a single fishery. Thus, regulations that restrict the harvesting of one species of a group of related species may cause transfers of fishing effort to other fisheries.

(3) Many fisheries of the Northwest Atlantic result in significant mortality on non-target species. Therefore, each management plan must consider the impact of non-target species fishing mortality on other stocks.

(4) Present on-going research programs often provide data on stock size, levels of recruitment, distribution, and age and growth for many of the species regulated by the PMPs, FMPs and proposed FMPs.

#### 3.4.2. Treaties or International Agreements

Relevant international agreements are described in Appendix 6.

#### 3.4.3. Federal Laws and Policies

##### 3.4.3.1. Marine Sanctuaries and Other Special Management Systems

The U.S.S. Monitor Marine Sanctuary was officially established on January 30, 1975, under the Marine Protection, Research and Sanctuaries Act of 1972. The Sanctuary's position off the coast of North Carolina at 35°00'23" N latitude, 75°24'34" W longitude, is not located in the plan's designated management area. No other marine sanctuaries have been designated under the federal statute in the Northwest Atlantic.

##### 3.4.3.2. Current and/or Proposed Oil, Gas, Mineral and Deep Water Port Developments

While Outer Continental Shelf (OCS) exploration and development plans involve areas overlapping those contemplated for offshore fishery management, the Council is unable to specify the relationship of both programs without site-specific information. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts, from a fishery management viewpoint include: (1) exclusion areas, (2) adverse impacts to sensitive, biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. The Council is not aware of pending deep water port plans

which would directly impact offshore fishery management goals in the areas under consideration, nor is it aware of potential effects of offshore fishery management plans upon future development of deep water port facilities.

#### 3.4.4. State, Local and Other Applicable Laws and Policies

State laws affecting the fishery that is the subject of this management plan are outlined in Appendix 6.

##### 3.4.4.1. State Coastal Zone Management (CZM) Programs

The proposed action entails management of Atlantic herring stocks in an effort to ensure sustained productivity at some optimum level. This effort is necessary in order to achieve integrity of fish stocks, related food chains, and habitat necessary for this integrated biological system to function effectively. Most CZM plans for the New England states are presently in the developmental stages and there are presently no specif-

ic state coastal zone management measures which would ultimately impact this fishery management plan either favorably or adversely. However, the CZM Act of 1972 as amended (P.L. 94-583) is primarily protective in nature, and provides measures for ensuring stability of productive fishery habitats within the coastal zone. Therefore, each state's CZM plan will probably assimilate the ecological principles upon which this particular fishery management plan is based. It is recognized that responsible long-range management of both coastal zones and fish stocks must involve mutually supportive goals. Thus, when details are forthcoming, specific state CZM plan elements related to fishery concerns will be incorporated.

The Massachusetts CZM program received final approval from the Secretary of Commerce on May 15, 1978. The program contains several policies with which subsequent

federal action must be consistent. This plan is consistent with each of them, in particular Policy 14, which encourages commercial fisheries research and development, and the restoration and management of fishery resources.

#### APPENDIX 3.—BIOLOGICAL MODEL FOR DETERMINING AREA/PERIOD TAC, TECHNICAL DESCRIPTION (IN SUPPORT OF SECTION 2.6.1. OF THE PLAN)

Consider the case of three spawning stocks ( $i=1, 2, 3$ ), four seasonal periods ( $t=1, 2, 3, 4$ ), and three exploitation areas ( $j=1, 2, 3$ ). Assume that the composition of the adult herring fishery catch in the  $j$ th area during a given seasonal period ( $t$ ), with respect to stock origin, is directly related to the relative abundance of the various adult stock biomasses in the same  $j$ th area during the same seasonal period.

$$\begin{aligned}
 \text{LET: } K_{(3,3)}^t &= \{K_{ij}^t\} = \text{percent distribution of stock (i) in} \\
 &\quad \text{exploitation area (j) during seasonal} \\
 &\quad \text{period (t).} \\
 A_{(1,3)}^t &= \{a_i^t\} = \text{The age 4+ abundance (MT) of each of} \\
 &\quad \text{three spawning stocks,} \\
 \text{SET: } B_{(3,3)} &= \{b_{mn}\} = \begin{bmatrix} a_1 & 0 & 0 \\ 0 & a_2 & 0 \\ 0 & 0 & a_3 \end{bmatrix} \\
 \text{AND LET } S_{(1,3)}^t &= \{s_j^t\} = \text{the total abundance of fish in areas 4XW,} \\
 &\quad \text{5Y and 5Z/SA6 during period t,} \\
 \text{WHERE } S^t &= \begin{bmatrix} A^t \cdot K^t \\ s_{(1,1)}^t & 0 & 0 \\ 0 & s_{(2,1)}^t & 0 \\ 0 & 0 & s_{(3,1)}^t \end{bmatrix} \quad (1) \\
 \text{SET: } R_{(3,3)}^t &= \{r_{mn}^t\} = \\
 \text{THEN, } C_{(3,3)}^t &= \text{the distribution of spawning stock (i) in} \\
 &\quad \text{metric tons by exploitation area (j) for} \\
 &\quad \text{period (t),} \\
 &= B \cdot K^t, \quad (2) \\
 \text{AND } G_{(3,3)}^t &= \text{the percent contribution of stock (i) in} \\
 &\quad \text{exploitation area (t) during period (t),} \\
 &= C^t \cdot R^{t-1} \quad (3)
 \end{aligned}$$



Included in the herring management objectives are considerations of recovery rates for individual adult spawning stocks. It is recognized that because adult herring from the three spawning stocks migrate in seasonal patterns and geographically overlap in varying proportions within a given area at various times of the year, the annual area TAC consistent with the expectation of a certain increase in the biomass of a given stock or stocks will be partially dependent upon the expected spatial distribution of catch within an area over the year.

Noting (4), it is seen that the  $y_j^t$ 's allow the possibility to analyze the impact of various assumed temporal catch patterns within areas on the resultant area TACs ( $q$ ), and yet maintain

consistency with the specified stock TAC constraints ( $x$ ). The  $y_j^t$  values which are chosen may be made to reflect historical performance or catch distribution over the fishing year. Closures by area or season may be simulated and the impacts on the area TACs ascertained.

**NOTICE TO READER.**—Only Appendix 3 is published herein, the other 8 appendices may be obtained by contacting Mr. William G. Gordon, Regional Director, Northeast Regional Office, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone (617) 281-3600.

[FR Doc. 78-35699 Filed 12-21-78; 2:36 pm]

LET:  $y_{(3,3)}^t$

$$\begin{bmatrix} y_{11}^t & 0 & 0 \\ 0 & y_{22}^t & 0 \\ 0 & 0 & y_{33}^t \end{bmatrix}$$

where  $y_{jj}^t$  = the percent distribution of catch by period ( $t$ ) for each exploitation area ( $j$ ).

$A_{(3,3)}$

a matrix describing the relative abundance of stocks in the three exploitation areas for each of four seasonal periods as adjusted by the expected proportions of the total catch of adults from an area that could be taken during a given period.

$$\sum_{t=1}^4 (g^t \cdot y^t).$$

(4)

$t=1$

AND,  $x$

the vector of acceptable biological catch levels appropriate to each stock.

THEN,  $Q_{(3,1)}$

the total allowable catch appropriate to a given exploitation area.

$$A^{-1} \cdot x.$$

(5)

[4810-33-M]

## Title 12—Banks and Banking

### CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

#### PART 11—SECURITIES EXCHANGE ACT

##### Disclosure Rules

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Securities Exchange Act Disclosure Rules (12 CFR Part 11) promulgated by the Comptroller of the Currency ("Comptroller") under the Securities Exchange Act of 1934 ("the 1934 Act") in order to clarify those regulations and to substantially conform them to rules and regulations issued by the Securities and Exchange Commission ("SEC"). Section 12(i) of the 1934 Act requires that changes made by the SEC in its relevant rules and regulations must also be made by the Comptroller in the Securities Exchange Act Disclosure Rules unless he finds that such changes are not appropriate in the public interest or for the protection of investors, and such findings are published in the *FEDERAL REGISTER*. This amendment is intended to respond to the statutory mandate and among several areas covers the following: (1) Confidential treatment; (2) dissemination of proxy information to beneficial owners by issuers through intermediary recordholders; (3) preliminary proxy materials; (4) shareholder proposals; and (5) tender offers.

**EFFECTIVE DATE:** January 29, 1979.  
**FOR FURTHER INFORMATION CONTACT:**

Ralph Janvey, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, DC 20219 at (202) 447-1954.

**SUPPLEMENTARY INFORMATION:** On March 13, 1978, the Comptroller published in the *FEDERAL REGISTER* (43 FR 10371) for comment proposed amendments to the Securities Exchange Disclosure Rules (12 CFR Part 11) in order to clarify and make them more similar to SEC regulations. Interested persons were given the opportunity to submit, not later than May 12, 1978, their views regarding the proposed amendments (43 FR 10938).

The Comptroller received two comments in response to the proposed amendments, which were carefully considered but not adopted for the reasons specified below:

1. One commentator, while having no significant objections per se to the disclosure of preliminary proxy materials, opined that disclosure of preliminary information which is inaccurate could mislead investors. In response, the Comptroller notes that under the amendment preliminary proxy materials will be available for public inspection only after the definitive material is filed. Thus, a bank will have ample opportunity to make appropriate corrections prior to publication. Accordingly, the Comptroller believes that investors are unlikely to be misled through disclosure of preliminary proxy materials and is therefore adopting the amendments as proposed for comment.

2. A commentator suggested that the Comptroller should adopt a rule to provide that where a beneficial and a record holder of the same securities submit opposing proposals for inclusion in management proxy materials, the proposal of the beneficial owner should generally be preferred for inclusion in the materials. The Comptroller believes that if such an improbable event occurs, a decision should be formulated on the operative facts and resolved by administrative interpretation. Therefore, the Comptroller is adopting the shareholder proposal amendment as originally proposed.

Based on the foregoing, 12 CFR Part 11 is amended as set forth below.

The Comptroller amends 12 CFR Part 11 as follows:

1. § 11.2 is amended as follows:

##### § 11.2 Definitions.

(bb) A "subsidiary" of a bank is (1) an affiliate controlled by the bank, directly or indirectly through one or more intermediaries, except where the control (i) exists by reason of ownership or control of voting securities by the bank in a fiduciary capacity or (ii) was obtained by the bank in the course of securing or collecting a debt previously contracted in good faith, where ownership of the affiliate will be temporary, and no substantive continuing involvement occurs e.g., major development funds are advanced which expose the bank to further risk; or (2) a person a majority of whose voting securities are held in trust for the benefit of the holders of a class of stock of the bank pro rata.

2. § 11.3(c) is amended as follows:

§ 11.3 Inspection and publication of information filed under the Act; Notice of informal adjudications.

(c) *Nondisclosure of certain information filed.* Any person filing any statement, report, or document (herein referred to as the material filed) under the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below. The procedure provided in this rule shall be the exclusive means of requesting confidential treatment of information required to be filed under the Act.

(1) The person shall omit from the material filed the portion thereof that it desires to keep undisclosed (herein called the confidential portion), and shall indicate at the appropriate place in the material filed that the confidential portion has been so omitted and filed separately with the Comptroller of the Currency.

(2) The person shall file with the copies of the material filed with the Comptroller of the Currency:

(i) As many copies of the confidential portion, each clearly marked "Confidential Treatment," as there are copies of the material filed with the Comptroller of the Currency and with any exchange where such material is required to be filed. Each copy shall contain the complete text of the item and the entire answer thereto, even though the confidential portion does not constitute the whole of the answer; except that where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the material filed.

(ii) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain (A) an identification of the portion; (B) a statement of the grounds for objection, referring to and containing an analysis of the applicable exemption(s) from disclosure under the Comptroller of the Currency's rules and regulations adopted under the Freedom of Information Act (12 CFR 4.16, 4.17 and 4.17a), and a justification of the period of time for which confidential treatment is sought; (C) a written consent to the furnishing of the confidential portion to other government agencies, offices or bodies and to the Congress; and (D) the name of each exchange, if any, with which the material is filed. The copies of the confidential portion and the application filed in accordance with this subparagraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT" and addressed to the Comptroller of the Currency, Washington, D.C. 20219.



(3) Pending the determination by the Comptroller of the Currency as to the objection filed in accordance with paragraph (c)(2) of this section, the confidential portion will not be disclosed by the Comptroller of the Currency.

(4) If the Comptroller of the Currency determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the material filed. Such a determination will not preclude reconsideration whenever appropriate, such as upon receipt of any subsequent request under the Freedom of Information Act and, if appropriate, revocation of the confidential status of all or a portion of the information in question. Where confidential treatment is granted under this section, the Comptroller of the Currency will attempt, whenever possible, to give to the person who requested confidential treatment advance notice if the confidential treatment is to be revoked.

(5) In any case where request for confidential treatment has been denied or where a prior grant of confidential treatment has been revoked, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person or his agent for service.

(6) The confidential portion shall be made available to the public:

(i) Upon the lapse of 15 days after the dispatch of the notice by registered or certified mail of the finding and determination of the Comptroller of the Currency described in paragraph (c)(5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(ii) Upon the lapse of 30 days after the dispatch of notice by registered or certified mail of the finding and determination of the Comptroller of the Currency, if the statement described in paragraph (c)(6)(i) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 30 days;

(iii) If timely notice of intent to seek judicial review shall have been filed and if a petition for judicial review has been filed within 30 days, upon final disposition of such judicial proceedings adverse to such person.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Comptroller of the Currency and with each exchange concerned.

3. Sections 11.4(g)(1), 11.4(u) and 11.4(w)(1) are amended as follows:

**§ 11.4 Registration statements and reports.**

(g) *Current reports; shareholder filing of Form F-11.* (1) Every registrant bank shall file a current report in conformity with the requirements of Form F-3 within 15 days after the occurrence of the earliest event required to be reported, unless substantially the same information as required by that form has been previously reported by the bank.

(u) *Amendments.* All amendments shall comply with all pertinent requirements applicable to statements and reports. Amendments shall be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. All amendments should be filed on Form F-20.

(w) *Interpretation of requirements.* Unless the context clearly shows otherwise: (1) the forms require information only as to the bank and its subsidiaries.

**§ 11.5 [Amended]**

4. § 11.5(c)(1), Notes 1 and 2, § 11.5(c)(2), § 11.5(c)(3) and § 11.5(c)(8) (i) and (ii) are amended as follows:

(c) \* \* \*

(i) \* \* \*

Notes.—1. To reflect adequately the financial position and results of operations of a bank in its annual report to security holders, the financial presentation shall include, but not necessarily be limited to, the following:

(a) Comparative statements of condition at the end of each of the last 2 fiscal years similar in form to Form F-9A.

(b) Comparative statements of income for each of the last 2 fiscal years similar in form to Form F-9B.

(c) Comparative statements of changes in capital accounts for each of the last 2 fiscal years similar in form to Form F-9C.

(d) Comparative statements of changes in financial position for each of the last 2 fiscal years for which a statement of income is furnished, similar in form to Form F-9E.

(e) A comparative reconciliation of the "Reserve for Possible Loan Losses" account for each of the last 2 fiscal years, similar in form to Schedule VII, Form F-9D, in a note to the financial statements.

(f) Supplemental notes to financial statements to the extent necessary to furnish a fair financial presentation. Such notes should include the aggregate market value

as at the balance sheet date for each category of investment securities reported on the balance sheet, and other information required to be furnished in notes to financial statements included in the bank's Form F-3 Annual Report (Refer to 12 CFR 11.7(c) (5) to (10)).

2. If the financial statements included in the report to security holders reflect any differences in the principles of consolidation or other accounting principles or practices or in methods of applying accounting principles or practices from the financial statements of the bank filed or proposed to be filed with the Comptroller of the Currency, these shall be noted and the effect thereof reconciled or explained in the annual report to security holders if the differences have a material effect on the financial position or results of the bank.

(2) Furnish in comparative columnar form a summary of operations for each of the last five years. Where necessary, include by footnote or otherwise information or explanation of material significance to investors in appraising the results shown.

Note.—At a minimum, the following items shall be included: total operating income; provision for possible loan losses; total other operating expenses (excluding provision for possible loan losses); income before income taxes and securities gains (losses); applicable income taxes; income (loss) before securities gains (losses); securities gains (losses) less related income taxes; net income (loss); earnings per common share before securities gains (losses) and net income. Dividends per share shall be shown.

(3) The report shall contain information for each of the last two fiscal years similar to that required by Schedules III and VIII of Form F-9D in a note to the financial statements.

(8)(i) If the bank knows that securities of any class entitled to vote at a meeting and with respect to which the bank intends to solicit proxies, consents or authorization, are held of record by a broker, dealer, bank or voting trustee, or their nominees, the bank shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for a good cause shown) whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply material to such beneficial owners. The bank shall supply such record holder with additional copies in such quantities, assembled in such form and at such a place,

as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

(ii) If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency pursuant to section 17A of the Act, a bank shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with the above subparagraph (8)(i) with respect to any such participant.

5. § 11.5(f) (1) to (5) is amended as follows:

(f) *Material required to be filed.* (1) Six preliminary copies of each statement, form of proxy, and other items of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the Comptroller of the Currency by management or any other person making a solicitation subject to § 11.5 at least 10 calendar days or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such items are first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this paragraph (f)(1), a routine meeting means a meeting with respect to which no one is soliciting proxies subject to § 11.5 other than on behalf of management and at which management intends to present no matters other than the election of directors, election of inspectors of election, and other recurring matters. In the absence of actual knowledge to the contrary, management may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the Statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting, shall be filed with the Comptroller of the Currency.

(2) Six preliminary copies of any additional soliciting material relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Comptroller of the Currency at least 2 days (exclusive of Saturdays, Sundays, and Holidays) prior

to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(3) Six copies of each Statement, form of proxy, and other items of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Comptroller of the Currency not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

(4) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions or other material that discusses or reviews or comments upon the merits of any matter to be acted upon, and is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation, shall be filed with the Comptroller of the Currency by the person on whose behalf the solicitation is made at least 5 days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as may be authorized upon a showing of good cause therefor.

(5) All copies of material filed pursuant to paragraph (f) (1) and (2) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Comptroller of the Currency only and shall not be deemed available for public inspection before definitive material has been filed with the Comptroller of the Currency, except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Comptroller of the Currency may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof. All material filed pursuant to paragraph (f) (1), (2), or (3) of this section shall be accompanied by a statement of the date upon which copies thereof are intended to be, or have been, sent or given to security holders. All material filed pursuant to paragraph (f)(4) of this section shall be accompanied by a statement of the date upon which copies thereof are intended to be released to the individuals who will make the actual solicitation.

6. § 11.5(h)(1) is amended to delete the word "earnings" in the second sentence.

7. § 11.5(k) is amended as follows:

(k) *Proposals of security holders.* (1) If any security holder of the bank notifies management of the bank of his intention to present a proposal for action at a forthcoming meeting of the bank's security holders, management shall set forth the proposal in its Statement and identify the proposal in its form of proxy and provide means by which security holders can make the specification provided for by paragraph (d)(2) of this section. If management issues an information statement, it shall identify the proposal and indicate the disposition proposed to be made of the proposal by management at the meeting. Management, however, need not include a proposal in its Statement if such proposal is submitted less than 90 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, management of the bank shall not be required to include the proposal in its Statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (k) (2) and (3) of this section:

(i) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting of his proposal, and he shall continue to own such security through the date on which the meeting is held. If management requests documentary support for a proponent's claim that he is a beneficial owner of a security of the bank, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event management includes the proponent's proposal in its statement for the meeting and the proponent fails to comply with the requirements that he be a voting security holder continuously through the meeting date, management shall not be required to include any proposals submitted by the proponent in its statement for any meeting held in the following two calendar years.

(ii) *Notice.* The proponent shall notify management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at the time, he shall comply with it within 10 business days after being informed of it by management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at



the meeting, he shall arrange to have another security holder of the bank present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, management shall not be required to include any proposals submitted by the proponent in its Statement for any meeting held in the following two calendar years.

(iii) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by management within the following time period.

(A) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received by management at the bank's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on management's Statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by management a reasonable time before the solicitation is made.

(B) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

**NOTE.**—In order to curtail controversy as to the date on which a proposal was received by management, it is suggested that the proponents submit their proposals by Certified Mail-Return Receipt Requested.

(iv) *Number and length of proposals.* (1) The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in management's Statement for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200 word limit on supporting statements mentioned in paragraph (k)(2) of this section, he shall be provided the opportunity by management to reduce, within 10 business days, the items submitted by him to the limits required by this paragraph (k).

(2) If management opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its Statement a statement of the proponent, in not more than 200 words, in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to management at the time that the proposal is furnished, and neither management nor the bank shall be respon-

sible for such statement. The Statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the bank or by the Comptroller of the Currency to any person, orally or in writing as requested, promptly upon receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the Statement, they shall be furnished to the Comptroller of the Currency at the time of filing management's preliminary material pursuant to paragraph (f) of this section.

(3) Management may omit a proposal and any statement in support thereof from its Statement and form of proxy under any of the following circumstances:

(i) The proposal is, under applicable law, not a proper subject for action by security holders;

**NOTE.**—A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(ii) The proposal would, if implemented, require the bank to violate any state law or Federal law of the United States, or any law of any foreign jurisdiction, to which the bank is subject, except that this provision shall not apply with respect to any foreign law compliance which would be violative of any state or Federal law of the United States;

(iii) The proposal or the supporting statement is contrary to any of the Comptroller's proxy rules and regulations, including 12 CFR 11.5(h);

(iv) The proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the bank, its management, or any other person;

(v) The proposal deals with a matter that is not significantly related to the business of the bank;

(vi) The proposal deals with a matter that is beyond the bank's power to effectuate;

(vii) The proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(viii) The proposal relates to an election to office;

(ix) The proposal is counter to a proposal to be submitted by management at the meeting

(x) The proposal has been rendered moot;

(xi) The proposal is substantially duplicative of a proposal previously submitted to management by another proponent, which proposal will be included in management's proxy materials for the meeting;

(xii) Substantially the same proposal has previously been submitted to secu-

rity holders in management's Statement relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from management's Statement relating to any meeting of security holders held within the 3 calendar years after the latest such previous submission: *Provided, That*—(A) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(B) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(C) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(xiii) The proposal relates to specific amounts of cash or stock dividends.

(4) Whenever management asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its Statement, it shall file with the Comptroller of the Currency, not later than 50 days prior to the date the preliminary copies of the Statements are filed pursuant to paragraph (f) of this section, or such shorter period prior to such date as the Comptroller of the Currency may permit, 3 copies of the proposal and any statement in support thereof as received from the proponent, together with a statement of the reasons why management deems such omission to be proper in the particular case, and where such reasons are based on matters of law, a supporting opinion of counsel. Management shall at the same time, if it has not already done so, notify the proponent submitting the proposal of its intention to omit the proposal from its Statement and shall forward to him a copy of the statement of reasons why management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

8. Sections 11.5(l)(1), 11.5(l)(3)(iv) and 11.5(l)(4) are amended as follows:

(i) *Tender Offers.* (1) No person, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security, which is registered pursuant to Section 12 of the Act, of a national bank or a bank operating under the Code of

Law for the District of Columbia, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Comptroller of the Currency a statement containing the information and exhibits required by Form F-13.

(3) . . .

(iv) The information required by Items 1(c), 2(b), 2(e), 2(f) and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13, or a fair and adequate summary thereof.

**Instructions.** 1. Negative responses to any such items or sub-items for Form F-13 need not be included in the information published or sent or given to security holders. 2. Although the financial statements necessary to present a fair and adequate summary of Item 9 of Form F-13 may vary depending on the facts and circumstances involved, summary financial information will normally be sufficient summary disclosure of Item 9 for purposes of paragraph 3(iv) of this section. If the information required by Item 9 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained.

(4) Any additional material soliciting or requesting such tenders subsequent to the initial solicitation or request shall contain the names of the persons making such solicitation or request and the information required by Items 1(c), 2(b), 2(e), 2(f) and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13, or a fair and adequate summary thereof: *Provided, However,* That such material may omit any of such information previously furnished to the persons solicited or requested for tenders. Copies of such additional material soliciting or requesting such tenders shall be filed with the Comptroller of the Currency not later than the time copies of such material are first published or sent or given to security holders.

(5) . . .

(6) Four copies of the statement required by paragraph (i)(1) of this section, every amendment to such statement, and all other material required by this paragraph shall be filed with the Comptroller of the Currency.

9. Sections 11.7(c)(1) and 11.7(g) are amended as follows:

§ 11.7 Form and content of financial statements.

(c) *Provisions of general application.*—(1) Requirements as to form. Financial statements shall be prepared

in accordance with the applicable requirements of Forms F-9 A, B, C, D, and E. All money amounts required to be shown in financial statements may be expressed in even dollars or thousands, and an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a note as due to the dropping of amounts of less than \$1 or \$1,000, as appropriate.

(g) *Schedules to be filed.* . . .

(4) The schedules shall be verified if the financial statements are so verified.

10. Section 11.41, Form F-1, Item 4, Instruction 1 and Form F-1 Instructions as to Financial Statements are amended as follows:

§ 11.41 Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-1).

#### ITEM 4—SUMMARY OF OPERATIONS

Furnish in comparative columnar form a summary of operations for each of the last five fiscal years. Where necessary, include information or explanation, by footnote or otherwise, of material significance to investors in appraising the results shown.

**Instructions.** 1. At a minimum, the following items shall be included: Total operating income; provision for possible loan losses; total other operating expenses (excluding provision for possible loan losses); income before income taxes and securities gains (losses); applicable income taxes; income (loss) before securities gains (losses); securities gains (losses) less related income taxes, net income (loss); earnings per common share before securities gains (losses) and net income. Dividends per share shall be shown.

#### FORM F-1 INSTRUCTIONS—AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income required to be filed as a part of a Registration Statement on this form. Section 11.7 of this part governs the verification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts and statement of changes in financial

position and the schedules to be filed in support thereof.

#### A. FINANCIAL STATEMENTS OF THE BANK

1. . . .

2. *Statements of income, changes in capital accounts and changes in financial position.* (a) The bank shall file in columnar form verified statements of income, changes in capital accounts and changes in financial position for each of the three fiscal years preceding the date of the balance sheet required by Instruction 1(a).

(b) There shall be filed with each balance sheet filed pursuant to Instruction 1(b) verified statements of income, changes in capital accounts and changes in financial position of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. . . .

#### B. CONSOLIDATED STATEMENTS

4. *Consolidated Balance Sheets.* . . .

5. *Consolidated Statements of Income, Changes in Capital Accounts, and Changes in Financial Position.* (a) There shall be filed verified statements of income, changes in capital accounts and changes in financial position of the bank and its majority-owned (1) bank premises subsidiaries, (2) subsidiaries operating under the provisions of Section 25 or Section 25(a) of the Federal Reserve Act, ("Agreement Corporations" and "Edge Act Corporations"), and (3) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by Instructions 4.(a).

(b) There shall be filed with each balance sheet filed pursuant to Instruction 4.(b) verified statements of income, changes in capital accounts and changes in financial position of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

#### C. UNCONSOLIDATED SUBSIDIARIES AND OTHER PERSONS

11. § 11.42, Form F-2 is amended as follows:

§ 11.42 Form for annual report of bank (Form F-2)

#### ITEM 4—SUMMARY OF OPERATIONS

Furnish in comparative columnar form a summary of operations for each of the last five fiscal years. Where necessary, include information or explanation, by footnote or otherwise, of material significance to investors in appraising the results shown.

**Instructions.** 1. At a minimum, the following items shall be included: Total operating income; provision for possible loan losses; total other operating expenses (excluding provision for possible loan losses); income before income taxes and securities gains (losses); applicable income taxes; income (loss) before securities gains (losses); securities gains (losses) less related income taxes; net income (loss); earnings per common



share before securities gains (losses) and net income. Dividends per share shall be shown.  
2. . . .

#### ITEM 5—PENDING LEGAL PROCEEDINGS

(a) Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(b) If any material legal proceeding which was previously reported or which became reportable during the fourth quarter of a bank's fiscal year was terminated during such quarter, give the date of termination and describe the disposition thereof with respect to the bank and its subsidiaries.

Instructions. 1. . . .

#### ITEM 6—INCREASES AND DECREASES IN OUTSTANDING SECURITIES AND INDEBTEDNESS

(a) Give the following information as to all increases and decreases during the fiscal year in the amount of equity securities of the bank outstanding:

- (1) The title of the class of securities involved;
- (2) The date of the transaction;
- (3) The amount of securities involved and whether an increase or decrease; and
- (4) A brief description of the transaction in which the increase or decrease occurred. If previously reported, the description may be incorporated by a specific reference to the previous filing.

Instruction. The information shall be prepared in the form of a reconciliation between the amounts shown to be outstanding on the balance sheet to be filed with this report and the amounts shown on the bank's balance sheet for the previous year. The exercise of outstanding options or warrants, separately by class or type of option or warrant, conversions of previously issued convertible securities (separately by class of security) and the issuance of options may be grouped together showing the dates between which all such transactions occurred. If the information called for has been previously reported on Form F-4 it may be incorporated by a specific reference to the previous filing.

(b) Increases and decreases in the amount outstanding of debt securities and indebtedness which were previously reported in reports on Form F-4 should be listed and briefly discussed with appropriate cross references to the earlier disclosure.

(c) If, during the fourth quarter of the bank's fiscal year, the amount of debt securities or indebtedness outstanding has been increased or decreased through one or more transactions, and the aggregate amount of all such increases or decreases not previously reported exceeds 5% of the outstanding securities or indebtedness of the affected class, furnish the following information:

- (1) Title of class, the amount outstanding as last previously reported, and the amount

presently outstanding (as of a specified date);

(2) A brief description of the transaction or transactions resulting in the change;

(3) If an increase in securities or indebtedness is reported, furnish: (i) A statement of the aggregate net cash proceeds or the nature and aggregate amount of any consideration received or to be received by the bank; (ii) the names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the bank; (iii) a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose; and

(4) If a decrease in securities or indebtedness is reported, a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction or transactions.

Instructions. (1) For the purposes of responding to paragraph (c) the bank may treat each of the following as a single class of indebtedness: (i) Convertible long term debt, and (ii) other indebtedness.

(2) This paragraph does not apply to notes, drafts, bills of exchange, bankers' acceptances, or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding does not exceed \$50,000 face amount of indebtedness or 1,000 shares or other units.

(3) This paragraph includes the reissuance of treasury securities and securities held for the account of the bank thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this paragraph. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

(4) This paragraph need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

#### ITEM 7—CHANGES IN SECURITIES AND CHANGES IN SECURITY FOR REGISTERED SECURITIES

##### GENERAL INSTRUCTION

No response to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction Working capital restrictions and other limitations upon payment of dividends are to be reported hereunder.

#### ITEM 8—DEFAULTS UPON SENIOR SECURITIES

##### General Instruction

No response to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding 5 percent of the total assets of the bank and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of any arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 8 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the bank or its totally held subsidiaries.

#### ITEM 9—APPROXIMATE NUMBER OF EQUITY SECURITY HOLDERS

State in the tabular form indicated below the approximate number of holders of record of each class of equity securities of the bank as of the end of the fiscal year.

| (1)            | (2)                      |
|----------------|--------------------------|
| Title of class | Number of record holders |

Instructions. 1. Attention is directed to the definition of the term "equity security" in section 3(a)(11) of the Act and the definition of the term "held of record" in 12 CFR 11.2(j). 2. Information shall be given as of the end of the last fiscal year or as of any subsequent date, except that if the latest determination of the number of record holders of any class of equity securities was made for some other purpose within 90 days prior to the end of the last fiscal year, the

information may be given as of the date of such determination. 3. Information need not be given with respect to the number of holders of outstanding nontransferable options to purchase securities of the bank.

#### ITEM 10—SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information if not previously disclosed in a report on Form F-4.

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of any other director whose term of office as a director continued after the meeting.

(c) Briefly describe any other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter of a vote of security holders within the meaning of the item. 2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered. 3. Paragraph (b) need not be answered if: (i) Proxies for the meeting were solicited pursuant to 12 CFR 11.5, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Comptroller of the Currency was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto. 4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors. 5. If the bank has published a report containing all of the information called for by the item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit.

#### ITEM 11—OFFICERS OF THE BANK

(a) List the names and ages of all officers of the bank and all persons chosen to become officers; state the nature of any family relationship between them; indicate all positions and offices with the bank held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such. 2. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(b) Give a brief account of the business experience during the past five years of each officer, including his principal occupations and employment during that period

and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an officer has been employed by the bank or a subsidiary of the bank for less than 5 years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

#### ITEM 12—INDEMNIFICATION OF DIRECTORS AND OFFICERS

State the general effect of any charter provision, by-law, contract, arrangement or statute under which any director or officer of the bank is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

#### ITEM 13—FINANCIAL STATEMENTS AND EXHIBITS

List below all financial statements and exhibits filed as a part of the annual report:

- (a) Financial statements.
- (b) Exhibits.

##### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Name of Bank)

By: \_\_\_\_\_  
(Name and Title of Signing Officer)

Date: \_\_\_\_\_

#### FORM F-2—INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income required to be filed as a part of annual report on this form. Section 11.7 of this part governs verification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statements of changes in financial position, and the schedules to be filed in support thereof.

1. *Financial Statements of the Bank.* (a) There shall be filed for the bank, in comparative columnar form, verified balance sheets as of the end of the last two fiscal years and verified statements of income, changes in capital accounts and changes in financial position for such fiscal years.

- (b) . . . . .
2. *Consolidated Statements.*

15. § 11.43, Form F-3 is amended as follows. Item 13 is renumbered as Item 6.  
§ 11.43 Form for current report of a bank (Form F-3).

##### GENERAL INSTRUCTIONS

- A. . . . .
- B. Events to be Reported.

A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to Item 5 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountant to be furnished pursuant to Item 4(d) is unavailable at the time of filing, it shall be filed within thirty days thereafter. However, if substantially the same information as that required by this form has been previously reported by the bank, an additional report of the information on this form need not be made.  
C. . . .

#### INFORMATION TO BE INCLUDED IN REPORT.

##### ITEM 1—CHANGES IN CONTROL OF BANK

(a) If to the knowledge of management, a change in control of the bank has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided (1) a letter is furnished to the Comptroller of the Currency identifying the bank and requesting confidential treatment of the information and (2) the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Comptroller of the Currency.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control and the names of the lenders or pledgees. 2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

(b) Describe any contractual arrangements, including any pledge of securities of the bank, or any of its parents, known to management, the operation of the terms of which may at a subsequent date result in a change in control of the bank.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

##### ITEM 2—ACQUISITION OR DISPOSITION OF ASSETS

If the bank or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date and manner of the acquisition or disposition and a brief description of the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity



of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such person(s) and the bank or any of its affiliates, any director or officer of the bank, or any associate of any such director or officer. If the transaction being reported is an acquisition, identify the source(s) of the funds used unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act in which case the identity of such bank shall be omitted provided: (1) A letter is furnished to the Comptroller of the Currency identifying the bank and requesting confidential treatment of the information and (2) the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Comptroller of the Currency.

(b) If any assets so acquired by the bank or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the persons from whom acquired and whether the bank intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

**Instructions.** 1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities. 2. The term "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition: *Provided*, That such term does not include the construction or development of property by or for the bank or its subsidiaries on the acquisition of materials for such purpose. The term "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition. 3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets. 4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the bank's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition exceeded 10 percent of the total assets of the bank and its consolidated subsidiaries, (ii) if it involved the succession to or disposition of a business which would meet the test of a significant subsidiary, or (iii) if it involved the acquisition or disposition of an interest in a business which would meet the test of a significant subsidiary and would be required to be accounted for by the equity method. 5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of

this item. Where such control was acquired from or disposed of not more than five persons, their names shall be given; otherwise it will suffice to identify in an appropriate manner the class of such persons. 6. Attention is directed to the requirements in Item 6 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

#### ITEM 3—BANKRUPTCY OR RECEIVERSHIP

If a receiver, conservator, fiscal agent or similar officer has been appointed for a bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under state or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, conservator, fiscal agent or similar officer and the date of his appointment.

#### ITEM 4—CHANGES IN BANK'S CERTIFYING ACCOUNTANT

If an independent accountant who was previously engaged as the principal accountant to audit the bank's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the bank's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election) dismissal or engagement. (b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignations, dismissal or engagement there were any disagreements with the former accountant or any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule and those which occur at the decision-making level; i.e., between personnel of the bank responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principle accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or

was qualified as to the uncertainty, audit scope, or accounting principles; also describe the nature of each adverse opinion, disclaimer of opinion or qualification.

(d) The bank shall request the former accountant to furnish the bank with a letter addressed to the Comptroller of the Currency stating whether he agrees with the statements made by the bank in response to this item and, if not, stating the respects in which he does not agree. The bank shall file a copy of the former accountant's letter as an exhibit with all copies of the Form F-3 required to be filed pursuant to 12 CFR 11.4(q).

#### ITEM 5—OTHER MATERIALLY IMPORTANT EVENTS

The bank may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, which the bank deems of material importance to security holders.

#### ITEM 6—FINANCIAL STATEMENTS AND EXHIBITS

1. Business For Which Statements Are Required . . .

2. Statements Required

(a) . . .

(b) Statements of income, statement of changes in capital accounts, and statements of changes in financial position of the bank shall be filed for each of the last 3 full fiscal years and for the period, if any, between the close of the latest of such fiscal years and date of the latest balance sheet filed. These statements of income, changes in capital accounts and changes in financial position shall be verified up to the date of the verified balance sheet.

(c) . . .

(d) . . .

(e) . . .

12. Section 11.44, Form F-4 is amended as follows:

§ 11.41 Form for quarterly report of bank (Form F-4).

COMPTROLLER OF THE CURRENCY—FORM F-4,  
Quarterly Report

.....  
(Name of bank)

.....  
(City and State)

#### PART I, FINANCIAL INFORMATION

Part A— . . .

Part B— . . .

Part C— . . .

Part D— . . .

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) *Incorporation by reference to published statements.* If the bank makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, such information may be incorporated by reference to such published statement if copies thereof are filed as an exhibit to Part I of this report. Other information may be incorporated by reference in answer or par-

tial answer to any other item of Part II of this report in accordance with the provisions of 12 CFR 11.4(f).

Instructions (f), (g), (h), (i) and (j) will remain unchanged.

#### PART II, OTHER INFORMATION

**Instruction.** The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted: *Provided*, The responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the bank, an additional report of the information on this form need not be made. The term "previously reported" is defined in 12 CFR 11.2(t).

#### ITEM 1—LEGAL PROCEEDINGS

(a) Briefly describe any material legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and describe the disposition thereof with respect to the bank and its subsidiaries.

**Instructions.** 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding the foregoing instructions, any bankruptcy, conservatorship, receivership or similar proceeding with respect to the bank or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or affiliate of the bank, any principal holder of equity securities of the bank or any associate of any such director, officer or security holder, is a party adverse to the bank or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, state or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the bank and its subsidiar-

ies on a consolidated basis. Any such proceeding by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business." *Provided, however*, That such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

#### ITEM 2—CHANGES IN SECURITIES

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

**Instruction.** Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

#### ITEM 3—DEFAULTS UPON SENIOR SECURITIES

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding 5 percent of the total assets of the bank and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

**Instruction.** This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

**Instruction.** Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the bank or its totally held subsidiaries.

#### ITEM 4—INCREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS

If the amount outstanding of securities or indebtedness of the bank has been increased through the issuance of any new class of securities or indebtedness or through the issuance or re-issuance of any additional securities or indebtedness of a class outstanding, and the aggregate amount of all such increases not previously reported exceeds 5 percent of the outstanding securities or indebtedness of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the bank;

(c) The names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the bank;

(d) A reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose;

(e) A statement as to whether or not any such securities were registered under the Securities Act of 1933; if not, an indication of the exemption claimed and the facts relied upon to make the exemption available; and

(f) If the securities were capital shares, a statement of the amount of proceeds credited or to be credited to any account other than the appropriate capital share account.

**Instructions.** 1. For the purpose of responding to this item, the bank may treat each of the following as a single class of indebtedness: (i) Convertible long term debt; and (ii) other indebtedness.

2. This item does not apply to notes, drafts, bills of exchange, bankers' acceptances or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed \$50,000 face amount of indebtedness or 1,000 shares or other units.

3. This item includes the reissuance of treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this item. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

#### ITEM 5—DECREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS

If the amount outstanding of any class of securities or indebtedness of the bank has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds 5 percent of the amount of securities or indebtedness of the class previously outstanding, furnish the following information: (a) Title of the class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date).



(b) A brief description of the transaction(s) involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the registrant in connection with such transaction or transactions.

**Instruction.** Instructions 1 and 2 to Item 4 shall also apply to this Item. This Item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from payment of indebtedness at maturity.

#### ITEM 6—SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

**Instructions.** 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this Item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to 12 CFR 11.5, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Comptroller of the Currency was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the bank has published a report containing all of the information called for by this Item, the Item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

#### ITEM 7—OTHER MATERIALLY IMPORTANT EVENTS

The bank may, at its option, report under this Item any events, not previously reported in a report on Form F-3, with respect to which information is not otherwise called for by this form but which the bank deems of material importance to security holders.

#### ITEM 8—EXHIBITS AND REPORTS ON FORM F-3

(a) Exhibits. List below the documents, if any, filed as a part of this Report. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits:

1. Copies of the amendments to all constituent instruments and other documents described in answer to Item 2.

2. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 5.

3. Copies of the text of any proposal described in answer to Item 6.

4. Copies of any published report furnished in response to Item 6. (See Item 6, Instruction 5.)

5. Copies of any material amendment to the bank's charter or by-laws not otherwise required to be filed.

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

#### § 11.47 [Amended]

13. Section 11.47, Form F-11, is amended to delete present Item 7 entitled "Persons Retained, Employed or to be Compensated" and present Item 8, "Materials to be Filed as Exhibits," is renumbered Item 7.

14. Section 11.51, Form F-5, Item 5(e), Item 14(b)(7)(D)(A), Item 14, Instruction 1 and Item 15(a) are amended to read as follows:

#### § 11.51 Form for proxy statement or statement where management does not solicit proxies (Form F-5)

(e) If the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s); the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Comptroller of the Currency. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by section 3(a)(6) of the Act, indicate whether there exists

any agreement, arrangement, or understanding pursuant to which the registrant bank maintains or would maintain a correspondent deposit account at such lending bank.

**Instructions.** 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

#### ITEM 14—

(b) . . . . .  
(7) A tabular presentation of comparative per share data of the constituent bank or other persons pertaining to:

(i) (A) Income before securities gains (losses), (B) net income, and (C) Dividends declared for each of the last five fiscal years; and

**Instructions.** 1. Historical statements of income in their entirety, as required by Item 15, may be furnished in lieu of the summary of earnings specified in subparagraph (5). If summary of earnings information is presented, show, at a minimum, total operating income; provision for possible loan losses; total other operating expenses (excluding provision for possible loan losses); income before income taxes and securities gains (losses); applicable income taxes; income (loss) before securities gains (losses); securities gains (losses) less related income taxes; net income (loss); earnings per common share before securities gains (losses) and net income. Dividends per share shall be shown. The summary shall indicate retroactive adjustments of any material items affecting the comparability of the results.

#### ITEM 15—

(a) If action is to be taken with respect to any matter specified in Items 12, 13, or 14, above, furnish verified financial statements of the bank and its subsidiaries such as would be required in a registration statement filed pursuant to this Part. In addition, the latest available interim balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date and comparable prior period, shall be furnished. The information similar to that required by Schedules III, VII, and VIII (Loans, Reserve for Possible Loan Losses, and Deposits) shall be furnished in the notes to financial statements for periods as required by Section 11.7(g).

(b) . . . .  
(c) . . . .  
(d) . . . .

15. A new § 11.54 (Form F-13), is added to read as follows:

#### § 11.54 Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934 (Form F-13).

#### COMPTROLLER OF THE CURRENCY

#### FORM F-13

(Name of Subject Bank)

(Bidder)

(Title of Class of Securities)

(Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder)

**Instruction.** 1. Four copies of this statement, including all exhibits should be filed with the Comptroller of the Currency.

#### GENERAL INSTRUCTIONS

A. The item numbers and captions of the item shall be included but the text of the items may be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2-7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is designated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer, and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to Form F-13 disclosing all material changes in the items of that Schedule and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Form F-11 with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Form F-11 and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D: *Provided*, That the bidder indicates on the cover sheet of this statement that it is amending its Form F-11 by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term "bidder" means any person on whose behalf a tender offer is made; and

(ii) The term "subject bank" means any bank whose securities are registered pursuant to Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 and whose securities are sought by a bidder pursuant to a tender offer.

#### ITEM 1—SECURITY AND SUBJECT BANK

(a) State the name of the subject bank and the address of its principal office;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Comptroller of the Currency by the subject bank unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations) for each quarterly period during the past two years.

#### ITEM 2—IDENTITY AND BACKGROUND

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organizations, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If such person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on;

**Instruction.** 1. If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

**Instruction.** 1. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and a result of such proceeding, was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or state securities laws or finding any violation of such laws, and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order; and

**Instruction.** 1. While a negative answer to this subitem is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

#### ITEM 3—PAST CONTACTS, TRANSACTIONS OR NEGOTIATIONS WITH THE SUBJECT BANK

(a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this schedule, which has occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and:

(1) The subject bank or any of its affiliates which are corporations: *Provided, however*, That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the subject bank's consolidated revenues (which may be based upon information contained in the most recently available filing with the Comptroller of the Currency by the subject bank, unless the bidder has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred, or (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors or affiliates of the subject bank which are not corporations if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, exceeds \$40,000.

(b) Describe any contacts, negotiations or transactions which have occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject bank or its affiliates concerning, a merger, consolidation or acquisition, a tender offer or other acquisition of securities, an election of directors, or a sale or other transfer of a material amount of assets.



#### ITEM 4—SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

(a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreements; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined in Section 3(a)(6) of the Act, the name of such bank shall not be available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Comptroller of the Currency.

(d) If the source of all or any part of the funds to be used in the tender offer is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the subject bank maintains or would maintain a correspondent deposit account at such lending bank.

#### ITEM 5—PURPOSE OF THE TENDER OFFER AND PLANS OR PROPOSALS OF THE BIDDER

State the purpose or purposes of the tender offer for the subject bank's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject bank or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject bank or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject bank including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject bank;

(e) Any other material change in the subject bank's corporate structure or business;

(f) Causing a class of securities of the subject bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject company becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act.

#### ITEM 6—INTEREST IN SECURITIES OF THE SUBJECT BANK

(a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Comptroller of the Currency by the subject

bank unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this Item or by an executive officer, director or subsidiary of such person.

**Instructions.** 1. The description of a transaction required by Item 6(b) shall include, but not necessarily be limited to: (1) the identity of the person covered by Item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected. 2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Comptroller of the Currency pursuant to 12 CFR 11.5(d)(6), such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it should be filed with the Comptroller of the Currency promptly but in no event later than two business days after the date of such filing, and if material should be disclosed to security holders of the subject bank in a manner similar to that in which the tender offer was first published, sent or given to such security holders. The procedure specified in this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

#### ITEM 7—CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO THE SUBJECT BANK'S SECURITIES

Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C of this Schedule) and any person with respect to any securities of the subject bank, (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures loan or option arrangements, puts or calls, guaranty of loans, guaranty against loss, or the giving or withholding of proxies) naming the persons with whom such contracts, arrangements, understandings and relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that, disclosure of standard default and similar provisions contained in loan agreements need not be included.

#### ITEM 8—PERSONS RETAINED, EMPLOYED OR TO BE COMPENSATED

Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitation or recommendation in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

#### ITEM 9—FINANCIAL STATEMENTS OF CERTAIN BIDDERS

Where the bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder of the subject bank whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder: *Provided*, That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

**Instructions.** 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this Item for the type of bidder specified: (a) Financial statements prepared in compliance with SEC Form 10 as amended (17 CFR 349.210) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with SEC Form F-20 (17 CFR 249.200) for a foreign bidder which is eligible to use such forms.

2. If the bidder is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Act, financial statements contained in any document filed with the Comptroller of the Currency may be incorporated by reference in this schedule solely for the purpose of this schedule: *Provided*, That such financial statements substantially meet the requirements of this Item; an express statement is made that such financial statements are incorporated by reference; the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise, and an indication is made where such information may be inspected and copies obtained. Financial statements which are required to be presented in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

3. If the bidder is not subject to the periodic reporting requirements of the Act, the financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

#### ITEM 10—ADDITIONAL INFORMATION

If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationship between the bidder or any of its executive officers, directors, controlling persons or subsidiaries and the subject bank or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangements or understanding required to be disclosed pursuant to Item 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applica-

ble regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of anti-trust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

**Instruction.** In connection with this sub-item, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceedings should be promptly furnished to the Comptroller of the Currency on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

#### ITEM 11—MATERIAL TO BE FILED AS EXHIBITS

Furnish a copy of:

(a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule;

**Instruction.** The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this schedule.

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this schedule;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) An offering circular when in an exchange offer, the securities are offered utilizing an offering circular prepared pursuant to 12 CFR Part 16.

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instructions, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

**Signature.** After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Signature \_\_\_\_\_  
Name and Title \_\_\_\_\_  
Date \_\_\_\_\_

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each

person who signs the statement shall be typed or printed beneath his signature.

16. Section 11.71, Forms for Financial Statements, Form F-9(A), Item 3(a)(3), and Item 6(b), Note 1, are amended to read as follows:

#### § 11.71 Forms for Financial Statements (Forms F-9 A, B, C, D, and E)

• • • • •

A. • • •

• • • • •

(3) • • •

(a) • • •

(3) Obligations of States and political subdivision.

Include all obligations, including warrants and tax anticipation notes, issued by municipalities, by school, irrigation, drainage, and reclamation districts, and by local housing authorities, including those backed by a U.S. Government Agency. Also include Farmers Home Administration guaranteed loans made for rural community water supply, waste disposal systems, and outdoor recreation centers. Obligations issued by other instrumentalities of one or more states or Puerto Rico, and by dependencies or insular possessions the United States, should be included. Exclude loans to but not investment securities issued by regional or local industrial development authorities whose function is the extension of credit to business firms to assist in relocation or expansion.

Such loans are to be reported in Item 6—Loans.

• • • • •

(6) • • •

(b) *Less: Reserve for Possible Loan Losses.* State the balance of the reserve for possible loan losses at the end of the fiscal year. Include in this reserve only the valuation portion that has been established through charges against income.

**NOTES.**—1. The reserve for possible loan losses allowable under IRS regulations is made up of three parts: (a) Valuation portion; (b) Contingency portion; and (c) Deferred tax portion.

• • • • •

17. Section 11.71, Form F-9(B) is amended to delete Item 2(j)(4).

(Sec. 12(l), Securities Exchange Act of 1934 (15 U.S.C. 78l(i)))

Dated: October 3, 1978.

JOHN G. HEIMANN,  
Comptroller of the Currency.

[FR Doc. 78-35022 Filed 12-27-78; 8:45 am]

[6210-01-M]

#### Title 12—Banks and Banking

#### CHAPTER II—FEDERAL RESERVE SYSTEM

#### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

(Reg. F; Docket No. R-0146)

#### PART 206—SECURITIES OF STATE MEMBER BANKS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

**SUMMARY:** The Board hereby adopts amendments to its Regulation F (12 CFR § 206), consistent with recent amendments to comparable regulations of the Securities and Exchange Commission, concerning (a) confidential treatment for preliminary proxy and information statements, (b) proposals by security holders, (c) dissemination of proxy material to beneficial owners of registered securities, (d) tender offer statements, (e) consolidation and technical revisions of several items included in current, quarterly, and annual reports, and (f) stock appreciation rights. Under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78(i)), any changes made by the Commission in its relevant rules and regulations must also be made by the Board in its Regulation F or the Board must publish reasons why it has determined that such changes are not necessary or appropriate.

DATE: Effective date: January 29, 1979.

#### FOR FURTHER INFORMATION CONTACT:

Richard M. Whiting, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3786).

**SUPPLEMENTARY INFORMATION:** On March 13, 1978, there was published in the FEDERAL REGISTER (43 FR 10387) a notice of proposed rulemaking to amend the Board's securities disclosure regulations in order to make them more similar to SEC regulations. Interested persons were given the opportunity to submit, not later than May 1, 1978, data, views or arguments regarding the proposed amendments. All comments have been given due consideration. The only revisions suggested by the comments concerned the proposed disclosure of preliminary proxy statements (12 CFR 206.5(f)(5)) and the shareholder proposal rule (12 CFR 206.5(k)).

A commentator suggested that preliminary proxy material might contain inaccurate information that would



mislead investors. However, under the proposed amendment, the public could only obtain preliminary proxy statement materials after definitive material had been filed with the Board, in which case the Board believes that the public is unlikely to be misled. Thus, the Board has adopted the proposal as published for comment. A commentator also suggested that the shareholder proposal rule should be revised to provide that where beneficial and record holders of the same securities submit conflicting proposals, only the proposal of the beneficial holder need be included in proxy materials. The likelihood of such an occurrence appears remote and, therefore appears to be better resolved by administrative interpretation. Therefore, the Board is adopting the shareholder proposal rule, as proposed. Accordingly, 12 CFR Part 206 is amended as set forth below.

By order of the Board of Governors,  
October 17, 1978.

THEODORE E. ALLISON,  
Secretary of the Board.

§ 206.4(h)(1) of Regulation F is amended to read as follows:

§ 206.4 Registration statements and reports.

(h) \* \* \*

(1) Every registrant bank shall file a current report in conformity with the requirements of Form F-3 within the period specified in that form unless substantially the same information as that required by Form F-3 has been previously reported by the bank.

Section 206.5(c)(5), (c)(4), (f)(5), (k), (1)(i), (1)(3)(iv), (1)(4), and (1)(7) are amended to read as follows:

§ 206.5 Proxy statements and other solicitations under section 14 of the Act.

(c) \* \* \*

(3) If the bank knows that securities of any class entitled to vote at a meeting with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank, or voting trustee, or their nominees, the bank shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown), whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number

of copies of the annual report to security holders, necessary to supply such material to beneficial owners. The bank shall supply such record holder in a timely manner with additional copies in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

(4) If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, a bank shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with § 206.5(c)(3) with respect to any such participant.

(f) \* \* \*

(5) All copies of material filed pursuant to paragraphs (1) or (2) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Board only and shall not be deemed available for public inspection before definitive material has been filed with the Board, except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Board may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Board. All material filed pursuant to paragraphs (f) (1), (2), or (3) of this section shall be accompanied by a statement of the date upon which definitive material filed pursuant to paragraph (f)(3) of this section is intended to be, or has been, released to security holders. All material filed pursuant to paragraph (f)(4) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individuals who will make the actual solicitation.

(k) *Proposals of security holders.* (1) If any security holder of an issuer notifies the management of the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the management shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by § 206.5(d)(2).

If management issues an information statement pursuant to paragraph (a) of this section, it shall identify the proposal and indicate the disposition proposed to be made of the proposal by the management at the meeting. Management, however, need not include a proposal in its information statement if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, the management shall not be required to include the proposal in its proxy statement or form or proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (k) (2) and (3) of this section:

(i) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(ii) *Notice.* The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting mate-

rials for any meeting, held in the following two calendar years.

(iii) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the management within the following time periods:

(A) *Annual meetings.* A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on the management's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(B) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

NOTE.—In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(iv) *Number and length of proposals.* The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (k)(2) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(2) If the management opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the issuer shall be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the issuer or by the Board to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the

name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Board at the time of filing the management's preliminary proxy material pursuant to § 206.5(f)(1).

(3) The management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(i) If the proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders;

NOTE.—A proposal that may be improper under the applicable State law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(ii) If the proposal would, if implemented, require the issuer to violate any State law or Federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any State law or Federal law of the United States;

(iii) If the proposal or the supporting statement is contrary to any of the Board's proxy rules and regulations, including § 206.5(h) which prohibits false or misleading statements in proxy soliciting materials;

(iv) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

(v) If the proposal deals with a matter that is not significantly related to the issuer's business;

(vi) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(vii) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(viii) If the proposal relates to an election to office;

(ix) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(x) If the proposal has been rendered moot;

(xi) If the proposal is substantially duplicative of a proposal previously submitted to the management by another proponent, which proposal will be included in the management's proxy materials for the meeting;

(xii) If substantially the same proposal has previously been submitted to security holders in the management's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the management's proxy materials relating to any meeting of security holders held within 3 calen-

dar years after the latest such previous submission: *Provided, That—*(A) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(B) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(C) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(xiii) If the proposal relates to specific amounts of cash or stock dividends.

(4) Whenever the management asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Board not later than 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 206.5(f)(1), or such shorter period prior to such date as the Board or its staff may permit, five copies of the following items: (i) The proposal; (ii) any statement in support thereof as received from the proponent; (iii) a statement of the reasons why the management deems such omission to be proper in the particular case; and (iv) where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(i) *Invitations for tenders.* (1) No person, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of the Act of any member State bank, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Board a statement



containing the information and exhibits required by the Form F-13.

(3) . . .

(iv) The information required by items 1(c); 2(b), 2(e), 2(f), and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13, or a fair and adequate summary thereof;

*Instructions.* 1. Negative responses to any such item or subitem of Form F-13 need not be included in the information published or sent or given to security holders.

2. If the information required by Item 9 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained.

(4) Any additional material soliciting or requesting such tender offer subsequent to the initial solicitation or request shall contain the names of the persons making such solicitation or request and the information required by Items 1(c), 2(b), 2(e), 2(f), and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13, or a fair and adequate summary thereof. *Provided, however,* That such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Board not later than the time copies of such material are first published or sent or given to security holders.

(7) Ten copies of the statement required by paragraph (1), every amendment to such statement and all other material required by this rule and such statement shall be filed with the Board.

§ 206.6(e)(3) and (1) are amended to read as follows:

§ 206.6 "Insiders" securities transactions and reports under section 16 of the Act.

(e) . . .

(3) Notwithstanding the foregoing, a statement need not be filed pursuant to section 16(a) of the Act:

(i) By any person with respect to the acquisition, expiration, surrender to the bank, or cancellation of any non-transferable stock option or stock appreciation right granted by the bank of the securities to which the option or right relates pursuant to a plan which meets the conditions specified in § 206.6(1) (1), (2), (3), (4) and (5) (a), (b), (c), (d) and (e) of this chapter, or;

(Sec. 12(i), Securities Exchange Act of 1934, 15 U.S.C. 78l(i))

(ii) By any bank with respect to any put, call, option or other right or obligation to buy or sell securities of which it is the issuer. As used in this subparagraph (3), the term "plan" shall have the meaning assigned to it in subparagraph (4) of § 206.6(1).

(1) *Exemption from section 16(b) of acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans.* Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as defined in subparagraph (4)(i) of this paragraph, or any acquisition, expiration, cancellation or surrender to the bank of a stock option or stock appreciation right pursuant to such a plan by a director or officer of the bank shall be exempt from the operation of section 16(b) of the Act if the plan meets the following conditions:

(1) Approval by security holders. The plan has been approved, directly or indirectly, (i) by the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the bank was chartered, or (ii) by the written consent of the holders of a majority of the securities of the bank entitled to vote: *Provided, however,* That if such a vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the bank shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan that would be required by the rules and regulations in effect under section 14(a) of the Act at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of (a) the first registration of an equity security under section 12 of the Act or (b) the acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of such written information shall be filed with, or mailed for filing to, the Board not later than the

date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor bank if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would:

(1) Materially increase the benefits accruing to participants under the plan;

(2) Materially increase the number of securities which may be issued under the plan; or

(3) Materially modify the requirements as to eligibility for participation in the plan.

(2) Disinterested administrators. If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan, or the determination of the number or maximum number or shares of stock which may be allocated to any such director or officer or which may be covered by stock options or stock appreciation rights granted to any such director or officer pursuant to the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors:

(a) By the board of directors of the bank, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(b) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(c) Otherwise in accordance with the plan, if the plan: (1) Specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or (2) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(ii) With respect to the participation of officers who are not directors:

(a) By the Board of directors of the bank or a committee of three or more directors;

(b) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(c) Otherwise in accordance with the plan, if the plan: (1) Specifies the number of maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or (2) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) Plan limitations. As to each participant or as to all participants the plan effectively limits the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date, and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time, or similar factors that will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) Definitions. Unless the context otherwise requires, all terms used in this rule shall have the same meaning as in the Act or elsewhere in Part 206. In addition, the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions:

(a) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(b) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by him or his guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of § 206.6(1) shall not include:

(a) The making of an election to receive under any plan compensation in the form of stock or credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and, provided, further, that such election is irrevocable until at least six months after termination of employment;

(b) The subsequent crediting of such stock;

(c) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(d) The fulfillment of any condition to the absolute right to receive such stock; or

(e) The acceptance of certificates for shares of such stock.

(iii) The term "disinterested person" used in §§ 206.6(1)(2) and 206.6(1)(5) hereof shall mean an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) Cash Settlements of Stock Appreciation Rights. Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the oper-

ation of section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(i) Information about the issue. (a) The bank that is the issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(b) The bank that is the issuer of the stock appreciation right on a regular basis does release for publication quarterly and annual summary statements of revenues and earnings. This condition shall be deemed satisfied if the specified financial data appears (1) on a wire service, (2) in a financial news service, (3) in a newspaper of general circulation, or (4) is otherwise made publicly available.

(ii) Limitation of the right and any related option. Neither the stock appreciation right nor any related stock option shall have been exercisable during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) Administration of the plan. (a) The plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(b) The board or committee shall have sole discretion either (1) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or (2) To consent to or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates.

(c) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by him of this stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in § 206.6(1)(5)(i)(b) hereof and ending on the twelfth business day following such date. This subparagraph, (5)(iii)(c), however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(1) Is automatic or fixed in advance under the plan;



(2) Is at least six months beyond the date of the stock appreciation right; and

(3) Is outside the control of the participant.

(iv) Compliance with other conditions of § 206.6(1). The plan under which the stock appreciation rights and any related options are granted shall meet the conditions, specified above in § 206.6(1) (1), (2), (3), and (4).

(v) Limit of the exemption. Nothing in this § 206.6(1)(5) provides an exemption from section 16(b) for the acquisition of stock upon the exercise of a stock appreciation right or a stock option.

#### § 206.42 Form for annual report of bank (Form F-2)

##### GENERAL INSTRUCTIONS

###### A.-F. [No change]

##### OMISSION OF INFORMATION PREVIOUSLY FILED

(a) Except as provided in paragraph (b) below, the information called for by Items 1, 2, 3, 4, 8, 9, 10, 11, 12, 15, 16, 17, and 18 of this form is to be furnished by all registrants required to file a report, on this form. Items 5, 6, 7, 13, and 14 may be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Board a definitive proxy statement or a definitive information statement pursuant to § 206.5 of Regulation F which involved the election of directors, or which files such a proxy or information statement not later than 120 days after the close of the fiscal year.

(b) If the information called for by Items 2, 9, or 12 would be unchanged from that given in a previous report, a reference to the previous report which includes the required information will be sufficient. Copies of such previous report need not be filed with the report currently being filed on this form.

##### PART I

###### ITEMS 1, 2, AND 3. [NO CHANGE]

###### ITEM 4. SUMMARY OF OPERATIONS

###### INSTRUCTIONS. 1.-3. [NO CHANGE]

4. For any previously reported material charge or credit to income of an unusual or infrequent nature in which an amount of cost was estimated to be incurred in the fiscal year being reported on or the prior fiscal year, summarize such transaction and state the amounts of such estimated cost and the amounts of the actual cost incurred in such periods, the reasons for differences between estimated and actual amounts, if any, and provide a detailed reconciliation showing all changes and credits to any reserve provided.

###### ITEMS 5, 6, 7, AND 8 [NO CHANGE]

###### ITEM 9. LEGAL PROCEEDINGS

(a) Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to

which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(b) If any material legal proceeding which was previously reported or which became reportable during the fourth quarter of bank's fiscal year was terminated during such quarter, give the date of termination and describe the disposition thereof with respect to the bank and its subsidiaries.

##### INSTRUCTIONS

1. No collection, action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital of the bank. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the bank or any of its significant subsidiaries shall be described. Any material proceedings to which any director, officer or affiliate of the registrant, any security holder named in answer to Item 5(a), or any associate of any such director, officer or security holder, is a party, or has a material interest, adverse to the bank or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceeding arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity assets of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generally stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank the effect of such proceedings on the business or financial condition of the bank.

###### ITEM 10. INCREASES AND DECREASES IN OUTSTANDING SECURITIES

(a) Give the following information as to all increases and decreases during the fiscal

year in the amount of equity securities of the registrant outstanding:

- (1) The title of the class of securities involved;
- (2) The date of the transaction;
- (3) The amount of securities involved and whether an increase or decrease; and
- (4) A brief description of the transaction in which the increase or decrease occurred. If previously reported, the description may be incorporated by a specific reference to the previous filing.

Instructions. The information shall be prepared in the form of a reconciliation between the amounts shown to be outstanding on the balance sheet to be filed with this report and the amounts shown on the bank's balance sheet for the previous year. The exercise of outstanding options or warrants (separately by class or type of option or warrant), conversions of previously issued convertible securities (separately by class of security) and the issuance of options may be grouped together showing the dates between which all such transactions occurred. If the information called for has been previously reported on Form F-4, it may be incorporated by a specific reference to the previous filing.

(b) Increases and decreases in the amount outstanding of debt securities which were previously reported in reports on Form F-4 should be listed and briefly discussed with appropriate cross references to the earlier disclosure.

(c) If, during the fourth quarter of the bank's fiscal year, the amount of debt securities outstanding has been increased or decreased through one or more transactions, and the aggregate amount of all such increases or decreases not previously reported exceeds 5 percent of the outstanding securities of the affected class, furnish the following information:

(1) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(2) A brief description of the transaction or transactions resulting in the change;

(3) If an increase in securities is reported, furnish: (i) A statement of the aggregate net cash proceeds or the nature and aggregate amount of any consideration received or to be received by the bank; (ii) the names of the principal underwriters, if any; and (iii) a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose; and

(4) If a decrease in securities is reported, a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction or transactions.

##### INSTRUCTIONS

1. This paragraph does not apply to notes, drafts, bills of exchange, bankers' acceptances, or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed 1,000 shares or other units.

2. This paragraph includes the reissuance of treasury securities and securities held for the account of the issuer thereof.

3. This paragraph need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, or decreases resulting from the conversion of securities.

##### ITEMS 11, 12, 13, AND 14. [NO CHANGE]

##### ITEM 15. FINANCIAL STATEMENTS, EXHIBITS FILED, AND REPORTS ON FORM F-3

(a) List all of the following documents filed as a part of the report:

1. All financial statements.
2. All exhibits, including those incorporated by reference.

Instructions. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. Section 206.4(m) of Regulation F (12 CFR 206.4(m)).

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

##### ITEM 16. CHANGES IN SECURITIES AND CHANGES IN SECURITY FOR REGISTERED SECURITIES

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Restrictions upon payment of dividends are to be reported hereunder.

(c) If there has been a material withdrawal or substitution of assets securing any class of registered securities of the bank, furnish the following information:

1. Give the title of the securities.

2. Identify and describe briefly the assets involved in the withdrawal or substitutions.

3. Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This paragraph need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

##### ITEM 17. DEFAULTS UPON SENIOR SECURITIES

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding 5 percent of the equity capital of the bank, identify the indebtedness and state the nature of the default. In the case

of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 17 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the bank or its totally held subsidiaries.

##### ITEM 18. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information if not previously disclosed in a report on Form F-4

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to § 206.5 of Regulation F, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Board was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the Bank has published a report containing all of the information called for by the item, the item may be answered by a reference to the information contained in

such report, provided copies of such report are filed as an exhibit to the report on this form.

##### SIGNATURES

[No change]

##### INSTRUCTIONS AS TO FINANCIAL STATEMENTS

[No change]

##### INSTRUCTIONS AS TO EXHIBITS

Subject to provisions regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the report:

A. Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

B. Copies of all contracts and other documents of a character required to be filed as an exhibit to an original registration statement on Form F-1 which were executed or in effect during the fiscal year and not previously filed.

C. Copies of the exhibits called for by Instruction 3(d) to Item 4.

D. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 10(c).

E. Copies of the amendments to all constituent instruments and other documents described in answer to Item 16.

F. Copies of the text of any proposal described and copies of any published report furnished in response to Item 18.

Section 206.43 is amended to read as follows:

#### § 206.43 Form for current report of a bank (Form F-3).

##### BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

##### FORM F-3

##### Current Report

Pursuant to section 13 of the Securities Exchange Act of 1934. For the month of \_\_\_\_\_, 19—

(Exact name of bank as specified in charter)

(Address of principal office)

##### GENERAL INSTRUCTIONS

A. Rule as to Use of Form F-3.—Form F-3 shall be used for current reports under Section 13 of the Securities Exchange Act of 1934, filed pursuant to § 206.4(h) of Regulation F (12 CFR 206.4(h)).

B. Events to be Reported and Filing of Reports.—A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to Item 5 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to Item 4(d) is unavailable at the time of filing. It shall be filed within thirty days thereafter. Moreover, if substantially the same information as that required by this form has



been previously reported by the bank, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 206.2(v) of Regulation F (12 CFR 206.2(v)).

**C. Application of Regulation F.**—(a) Regulation F (12 CFR Part 206) contains certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to § 206.4 of Regulation F (12 CFR 206.4) which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the Report. The definitions contained in § 206.2 should be especially noted.

**D. Preparation of Report.** This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of § 206.4(t) of Regulation F (12 CFR 206.4(t)). The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in § 206.4(u) of Regulation F (12 CFR 206.4(u)). All items which are not required to be answered in the particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

**E. Signature and filing of report.**—Three complete copies of the report, including any financial statements, exhibits of other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Board. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the bank is registered. At least one complete copy of the report filed with the Board and one such copy filed with an exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

#### INFORMATION TO BE INCLUDED IN THE REPORT

##### ITEM 1. CHANGES IN CONTROL OF BANK

(a) If, to the knowledge of management, a change in control of the Bank has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Board.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the Bank, or any of its parents, known to management, the operation of the terms of which may at a subsequent date result in a change in control of the bank.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

(c) If the source of all or any part of the funds used to acquire control of the bank is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the registrant bank maintains or would maintain a correspondent deposit account at such lending bank.

##### ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

If the bank or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date and manner of the acquisition or disposition and a brief description of the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such person(s) and the registrant or any of its affiliates, any director or officer of the registrant, or any associate of any such director or officer.

(b) If any assets so acquired by the registrant or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the person(s) from whom acquired and whether the bank intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

Instructions. 1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition; *Provided*, That such term does not include the construction or development of property by or for the bank or its subsidiaries or the acquisition of materials for such purpose. The term "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, whether for the benefit of creditors or otherwise,

abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control for such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the bank's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition exceeded 10 percent of the total equity capital of the bank and its consolidated subsidiaries, (ii) if it involved the succession to or disposition of a business which would meet the test of a significant subsidiary, or (iii) if it involved the acquisition or disposition of an interest in a business which would meet the test of a significant subsidiary and would be required to be accounted for by the equity method.

5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of this item. Where such control was acquired from or disposed of to not more than five persons, their names shall be given; otherwise it will suffice to identify in an appropriate manner the class of such persons.

6. Attention is directed to the requirements in Item 6 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

##### ITEM 3. BANKRUPTCY OR RECEIVERSHIP

If a receiver, fiscal agent or similar officer has been appointed for a bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the Bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

##### ITEM 4. CHANGES IN BANK'S ACCOUNTANT

If an independent accountant who was previously engaged as the principal accountant to audit the bank's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the bank's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election), dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decisionmaking level; i.e., between personnel of the bank responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also describe the nature of each such adverse opinion, disclaimer of opinion or qualification.

(d) The bank shall request the former accountant to furnish the bank with a letter addressed to the Board stating whether he agrees with the statements made by the bank in response to this item and, if not, stating the respects in which he does not agree. The bank shall file a copy of the former accountant's letter as an exhibit with all copies of the Form F-3 required to be filed pursuant to General Instruction F.

##### ITEM 5. OTHER MATERIALLY IMPORTANT EVENTS

The bank may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, which the bank deems of material importance to security holders.

##### ITEM 6. FINANCIAL STATEMENTS AND EXHIBITS

List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements of business acquired.

Instructions. 1. Businesses for Which Statements Are Required.

The financial statements specified below shall be filed for any business the succession to which or the acquisition of an interest in which is required to be described in answer to Item 2 above.

2. Statements Required.

(a) There shall be filed a balance sheet of the business as of a date reasonably close to the date of acquisition. This balance sheet shall be verified if practical.

(b) Income and source and application of funds statements of the business shall be filed for each of the last three full fiscal years and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These income and source and application of funds statements shall be verified up to the date of the verified balance sheet, if practical.

(c) If the business was in insolvency proceedings immediately prior to its acquisition, the balance sheets required above need not be verified. In such case, the income and source and application of funds statements required shall be verified to the close of the latest full fiscal year, if practical.

(d) Except as otherwise provided in this instruction, the principles applicable to a registrant and its subsidiaries with respect to the filing of individual, consolidated and group statements in an original application or annual report shall be applicable to the statements required by this instruction.

3. Application of § 206.7.

Section 206.7 governs the examination and the form and content of the statements required by the preceding instruction, including the basis of consolidation, and prescribes the statements of other stockholders' equity to be filed. No supporting schedules need be filed. A manually signed accountant's report should be provided.

4. Filing of Other Financial Information in Certain Cases.

The Board, upon the written request of the bank and where consistent with the protection of investors, may permit the omission of one or more of the financial statements herein required or the filing in substitution thereof of appropriate statements of comparable character, if the required financial statements are not reasonably available to the bank, because the obtaining thereof would involve unreasonable effort, expense or practicable difficulties. A request for such relief shall be filed as a part of the report. If an extension of time has been granted pursuant to § 206.4(r) of Regulation F (12 CFR 206.4(r)), a request for relief shall be filed as a part of an amendment to the initial report within the additional time provided under said rule. The request shall set forth the following information:

(a) The reason(s) for the unavailability of the audited financial statements;

(b) The estimated costs of their preparation;

(c) An explanation of any other practical auditing problems; and

(d) A tabular presentation of the following items of information, comparing the acquired business(es) with the bank on a consolidated basis (including the acquired business(es)): (1) Operating income; (2) net income; (3) total assets; (4) total stockholder equity; and (5) total purchase price compared to total equity capital of bank.

The Board may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Exhibits. Subject to the rules as to incorporation by reference, copies of any plan of acquisition or disposition described in answer to Item 2, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith, shall be filed as exhibit to this report.

##### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on

its behalf by the undersigned thereunto duly authorized.

Date \_\_\_\_\_

(Registrant)

(Signature)

(Typed name of signing officer)

(Title of signing officer)

§ 206.44 (Form F-4) is revised by adding a new Part D to read as follows:

§ 206.44 Form for quarterly report of bank (Form F-4)

##### PART D OTHER INFORMATION

Instruction. The Report shall contain the item numbers and captions of all applicable items of Part D, but the text of such items may be omitted: *Provided*, The responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 206.2(v) of Regulation F.

##### ITEM 1. LEGAL PROCEEDINGS

(a) Briefly describe any material legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and describe the disposition thereof with respect to the Bank and its subsidiaries.

##### INSTRUCTIONS

1. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. Notwithstanding the foregoing instructions, any bankruptcy, receivership or similar proceeding with respect to the bank or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or affiliate of the bank, any principal holder of equity securities of the bank or any associate of any such director,



officer or security holder, is a party adverse to the bank or any of its subsidiaries shall also be described.

3. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity capital of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; *Provided, however*, That such proceedings which are similar in nature may be grouped and described generally stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

#### ITEM 3. CHANGES IN SECURITIES

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect to the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Limitations upon the payment of dividends are to be reported hereunder.

#### ITEM 3. CHANGES IN SECURITY FOR REGISTERED SECURITIES

If there has been a material withdrawal or substitution of assets securing any class of registered securities of the bank furnish the following information:

- Give the title of the securities.
- Identify and describe briefly the assets involved in the withdrawal or substitution.
- Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This item need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

#### ITEM 4. DEFAULTS UPON SENIOR SECURITIES

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiar-

ies exceeding 5 percent of the equity capital of the bank, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held, by, or for the account of, the bank or its totally held subsidiaries.

#### ITEM 5. INCREASE IN AMOUNT OUTSTANDING OF SECURITIES

If the amount outstanding of securities of the bank has been increased through the issuance of any new class of securities or through the issuance or reissuance of any additional securities of a class outstanding, and the aggregate amount of all such increases not previously reported exceeds 5 percent of the outstanding securities of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the bank;

(c) The names of the principal underwriters, if any;

(d) A reasonable itemized statement of the purposes so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose;

(e) If the securities were capital shares, a statement of the amount of the proceeds credited or to be credited to any account other than the appropriate capital share account.

#### INSTRUCTIONS

1. This item does not apply to notes, drafts, bills of exchange, bankers' acceptances or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed 1,000 shares or other units.

2. This item includes the reissuance of Treasury securities and securities held for the account of the issuer thereof.

#### ITEM 6. DECREASE IN AMOUNT OUTSTANDING OF SECURITIES

If the amount outstanding of any class of securities of the bank has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds 5 percent of the amount of securities of the class previously outstanding, furnish the following information:

(a) Title of the class, the amount outstanding as last previously reported, and the amount currently outstanding (as of a specified date).

(b) A brief description of the transaction(s) involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction(s).

Instruction. Instruction 1 to Item 5 shall also apply to this item. This item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, or decreases resulting from the conversion of securities.

#### ITEM 7. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

#### INSTRUCTIONS

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to § 206.5 of Regulation F under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Board was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a

reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

#### ITEM 8. OTHER MATERIALLY IMPORTANT EVENTS

The registrant may, at its option, report under this item any events, not previously reported in a report on Form F-3, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

#### ITEM 9. EXHIBITS AND REPORTS ON FORM F-3 (12 CFR 206.43)

(a) Exhibits. List below the documents, if any, filed as a part of this report. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits:

1. Copies of the amendments to all constituent instruments and other documents described in answer to Item 2.

2. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 5.

3. Copies of the text of any proposal described in answer to Item 7.

4. Copies of any published report furnished in response to Item 7. (See Item 7, Instruction 3.)

5. Copies of any material amendment to the bank's charter or by-laws not otherwise required to be filed.

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

#### § 206.47 [Amended]

Form F-11 (12 CFR 206.47) is amended by deleting the words "or § 206.5(1)" from the title of that form and deleting all of Item 7 and substituting the words, "Item 7" for "Item 8".

Item 5(e) of Form F-5 in § 206.51 is amended to read as follows:

§ 206.51. Form for proxy statement; statement where management does not solicit proxies (Form F-5).

• • • • •

Item 5. • • •

Item 5(e) of Form F-5 is amended to read as follows:

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control, and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordi-

nary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Board. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the registrant bank maintains or would maintain a correspondent deposit account as such lending bank.

#### INSTRUCTIONS.

1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees, unless confidential treatment has been requested pursuant to section 13(d)(1)(B) of the Act in which case the identity of the lending bank shall be omitted.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of the directors or other matters should be described.

#### § 206.54 [Added]

Form F-13 (12 CFR 206.54) is adopted to read as follows:

#### BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

#### FORM F-13.

Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934, (Amendment No. —), (Name of Subject Bank), (Bidder), (Title of Class of Securities), (Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder).

Instructions 1. Eight copies of this statement, including all exhibits, and two additional copies of this statement, including only the exhibits described in Item 11(a) of this statement, should be filed with the Board.

2. No fee is required to be paid to the Board in connection with the filing of the initial statement or amendments thereto.

General Instructions. A. The item numbers and captions of the items shall be included but the answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2-7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to Form F-13 disclosing all material changes in the items of that Form and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Form F-11 with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Form F-11 and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D: *Provided*, That the bidder indicates on the cover sheet of this statement that it is amending its Form F-11 by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term "bidder" means any person on whose behalf a tender offer is made; and (ii) The term "subject bank" means any bank whose securities are sought by a bidder pursuant to a tender offer.

Item 1. *Security and subject bank.* (a) State the name of the subject bank and the address of its principal offices;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Board by the subject bank unless the bidder has reason to believe such information is not current); the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market, if any, in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and



low bid quotations) for each quarterly period during the past two years.

Item 2. *Identity and background.* If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (g) of this Item with respect to such person(s).

(a) Name;  
(b) Residence or business address;  
(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on. Instruction. If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or State securities or banking laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order. Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

Item 3. *Past contacts, transactions or negotiations with the subject bank.* (a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this Form and those in the ordinary course of the bank's business, which has occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and:

(1) The subject bank or any of its affiliates which are corporations: *Provided, however,* That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than 1 percent of the subject bank's consolidated income (which may be based upon information contained in the most re-

cently available filing with the Board by the subject bank, unless the bidder has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred or, (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors or affiliates of the subject bank which are not corporations if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, exceeds \$40,000.

(b) Describe any contacts, negotiations or transactions other than those in the ordinary course of the bank's business which have occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject bank or its affiliates or any shareholder owning more than 10 percent of the outstanding shares of the subject bank concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 4. *Source and amount of funds or other consideration.* (a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Board.

(d) If the source of all or any part of the funds to be used in the tender offer is a loan made by a bank as defined by section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the subject bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 5. *Purpose of the tender offer and plans or proposals of the bidder.* State the purpose or purposes of the tender offer for the subject bank's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject bank or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject bank or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject bank including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject bank;

(e) Any other material change in the subject bank's corporate structure or business;

(f) Causing a class of securities of the subject bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject bank becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act.

Item 6. *Interest in securities of the subject bank.* (a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Board by the subject bank unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this Item or by any executive officer, director or subsidiary of such person.

Instructions. 1. The description of a transaction required by Item 6(b) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected.

2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Board such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it should be filed with the Board promptly but in no event later than two business days after the date of such filing, and if material, should be disclosed to security holders of the subject bank in a manner similar to that in which the tender offer was first published, sent or given to such security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

Item 7. *Contracts, arrangements, understandings or relationships with respect to the subject bank's securities.* Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C to this schedule) and any person with respect to any securities of the subject bank (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any

such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies), naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 8. *Persons retained, employed or to be compensated.* Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 9. *Financial statements of certain bidders.* Where the bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder. *Provided,* That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

Instructions. 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with Form 10 of the Securities and Exchange Commission (17 CFR 249.210) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with Form 20 of the Securities and Exchange Commission (17 CFR 249.220) for a foreign bidder which is otherwise eligible to use such form.

2. The financial statements required by this item need not be audited if such audited financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

Item 10. *Additional information.* If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of its executive officers, directors, controlling persons or subsidiaries and the subject bank or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding

required to be disclosed pursuant to Items 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of antitrust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

Instruction. In connection with this sub-item, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the Board on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 11. *Material to be filed as exhibits.* Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule. Instruction. The identity of any bank, other than the subject bank, which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this schedule;

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this schedule;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) In an exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information required to be included therein by Rule 434b of the Securities and Exchange Commission (17 CFR 230.434b);

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Signature \_\_\_\_\_  
Name and Title \_\_\_\_\_  
Date \_\_\_\_\_

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the rep-

resentative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[FR Doc. 78-35923 Filed 12-27-78; 8:45 am]

[6714-01-M]

## CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

### PART 335—SECURITIES OF INSURED STATE NONMEMBER BANKS

#### Proxy Statements, Tender Offers and Other Matters

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The new rule amends the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC") to correct existing errors and to effect minor revisions of a technical nature. Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) ("Act") requires that the FDIC issue substantially similar regulations to those of the SEC or publish its reasons for not doing so. This amendment is intended to comply with Section 12(i), to update the regulation and to make the regulation more understandable. Major revisions relate to proxy statements, tender offers and acquisitions of bank securities.

DATES: Effective date: January 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Gervino, Attorney, or Louis E. Wright, Financial Analyst, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202) 389-4422 or 389-4651.

SUPPLEMENTARY INFORMATION: On March 13, 1978, there was published in the FEDERAL REGISTER (43 FR 10401) a notice of proposed rule-making which would amend the FDIC's securities disclosure regulations in order to make them more similar to SEC regulations and for other purposes. Interested persons were given the opportunity to submit, not later than April 12, 1978, data, views or arguments regarding the proposed amendments. All comments, including those contained in SEC File No. S7-714 relating to the "beneficial ownership" definition, were given due consideration.



In view of the SEC's withdrawal of its proposal to amend its Rule 14a-3(d), 43 FR 7651 (1978), with respect to a duty of inquiry by issuers, the FDIC is withdrawing its conforming proposed amendment (12 CFR 335.5(c)(3)).

Since the original notice, the SEC has amended its Rule 13d-3 and by reference its Rule 14d-1 in a technical fashion (43 FR 18484; 43 FR 29767). These amendments were based upon comments received in the above SEC File and previous comments. The FDIC has invited comments upon its "beneficial ownership" definition and examined the SEC comment file. It has received no adverse comments on this definition, has found no reason not to adopt the SEC changes, and finds that they do not impose a burden upon persons subject to them. Therefore, the changes are being adopted in response to the SEC changes without an invitation for further comment.

The only suggested revisions concerned the proposed disclosure of preliminary proxy statements (12 CFR 335.5(f)(5)) and the shareholder proposal rule (12 CFR 335.5(h)).

A commentator suggested that preliminary material might contain inaccurate information that would mislead investors. The FDIC notes that the public could only obtain the preliminary proxy statement upon request after definitive material has been filed. The FDIC feels that the public is unlikely to be misled. Thus, the FDIC is adopting the proposal as published for comment.

A commentator also suggested that the shareholder proposal rule should provide an additional rule where beneficial and record holders of the same securities submit conflicting proposals. The FDIC feels this is an unlikely possibility which can be better resolved by administrative interpretation. Therefore, the FDIC is adopting the shareholder rule, as proposed. Accordingly, 12 CFR Part 335 is amended as set forth below.

By order of the Board of Directors,  
December 20, 1978.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
ALAN R. MILLER,  
Executive Secretary.

1. Section 335.2(e) is amended as follows:

§ 335.2 Definitions.

(e) The terms "beneficial ownership", "beneficially owned", and the like, when used with respect to the reporting of ownership of the bank's equity securities in any statement or report required by this Part, shall in-

clude, in addition to direct and indirect beneficial ownership by the reporting person, ownership of such securities (1) by the spouse (except where legally separated) and minor children of such reporting person, and (2) by any other relative of the reporting person who has the same home as such person.

2. Section 335.4 is amended by revising paragraphs (a)(2), (a)(3), (h)(5) and (m)(1) as set forth below:

§ 335.4 Registration statements and reports.

(a) \* \* \*

(2) *Registration of securities of successor bank.* Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12(g) of the Act, the class of securities so issued shall be deemed to be registered pursuant to section 12(g) of the Act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

(3) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12(g) of the Act but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the bank whose class of securities is so issued and such bank shall file a registration statement pursuant to section 12(g) of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement, or within such extended period of time as the Corporation may authorize upon application pursuant to § 335.4(r), unless upon consummation of the succession such class is exempt from such registration or all securities of the class are held of record by less than 300 persons.

(h) \* \* \*

(5)(i) For the purposes of § 335.4(h) or § 335.5(l) a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(A) *Voting power* which includes the power to vote, or to direct the voting of, such security; and/or

(B) *Investment power* which includes the power to dispose, or to direct the disposition, of such security.

(ii) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements of section 13(d) or section 14(d) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(iii) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(iv) Notwithstanding the provisions of other paragraphs of this § 335.4(h)(5):

(A)(1) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (ii) of this § 335.4(h)(5), if that person has the right to acquire beneficial ownership of such security, as defined in paragraph (i) at any time within sixty days including but not limited to any right to acquire: (1) Through the exercise of any option, warrant or right; (2) through the conversion of a security; (3) pursuant to the power to revoke a trust, discretionary account, or similar arrangement.

(4) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; *Provided, however,* any person who acquires a security or power specified in paragraphs (1), (2) or (3), above with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person, but shall not be deemed to be outstanding for the purposes of computing the percentage of the class by any other person.

(2) Paragraph (1) remains applicable for the purpose of determining the obligation to file with respect to the un-

derlying security even though the option, warrant, right or convertible security is of a class of equity security and may therefore give rise to a separate obligation to file.

(B) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(C) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, *Provided That:*

(1) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, not in connection with any transaction having such purpose or effect, including any transaction subject to section 335.5(h)(5)(ii);

(2) The pledgee is a person specified in SEC Rule 13d-1(b)(1)(ii) (17 CFR 240.13d-1(b)(1)(ii)), including persons meeting the conditions set forth in paragraph (G) thereof; and

(3) The pledgee agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged securities; or

(ii) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the Act.

(v) Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of sections 13(d) or 14(d), the beneficial owner of any securities covered by the statement.

(m) *Incorporation by reference.* (1) Information contained in any part of a registration statement or report, other

than exhibits, may be incorporated by reference in answer or partial answer to any item of the same statement or report. Information contained in an exhibit may be so incorporated to the extent permitted in paragraph (q) of this section.

3. In § 335.5, paragraph (c)(1), Note 6 is amended by deleting the term "Item 1 (c)(1)" and inserting in its place the term "Item 1 (e)".

4. In § 335.5, paragraph (c)(1), Note 9 is amended by deleting the term "§ 335.4(c)" from its first sentence and inserting in its place the term "§ 335.4(e)".

5. Section 335.5 is amended by revising paragraphs (c)(3) and (f)(5), as follows:

§ 335.5 Proxy statements and other solicitations under section 14 of the Act.

(c) \* \* \*

(3) If the bank knows that securities of any class entitled to vote at a meeting with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the bank shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown), whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners. The bank shall supply such record holder in a timely manner with additional copies in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

*Instructions.* 1. If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, a bank shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant.

2. The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available where other banks, broker-dealers, and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

3. The attention of banks is called to the fact that broker-dealers have an obligation pursuant to § 240.14b-1 of the rules and regulations of the Securities and Exchange Commission and applicable self-regulatory requirements to obtain and forward annual reports and proxy soliciting materials in a timely manner to beneficial owners for whom such broker-dealers hold securities.

(f) \* \* \*

(5) All copies of material filed pursuant to paragraphs (f)(1) and (2) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Corporation only and shall not be considered available for public inspection, before definitive material has been filed with the Corporation, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The Corporation may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof. All material filed pursuant to paragraphs (f)(1), (2), or (3) of this section shall be accompanied by a statement of the date upon which definitive copies thereof are intended to be, or have been, sent or given to security holders. All material filed pursuant to paragraph (f)(4) of this section shall be accompanied by a statement of the date upon which copies thereof have been or are intended to be released to the individuals who will make the actual solicitation.

6. In § 335.5, paragraph (h) is amended by deleting the word "earnings" in the second sentence.

7. In § 335.5, paragraph (k) is amended as follows:

(k) *Proposals of security holders.* (1) If any security holder of the bank notifies the management of the bank of his intention to present a proposal for action at a forthcoming meeting of the bank's security holders, the management shall set forth the proposal in its proxy statement or information statement. If management issues a proxy statement, it shall identify the proposal in its form of proxy and provide means by which security holders can make the specification required by § 335.5(d)(2). If management issues an information statement pursuant to



paragraph (a) of this section, it shall identify the proposal and indicate the disposition proposed to be made of the proposal by the management at the meeting. Management, however, need not include a proposal in its information statement if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, the management shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (k)(2) and (3) of this section:

(i) **Eligibility.** At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the bank, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(ii) **Notice.** The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the bank present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting mate-

rials for any meeting, held in the following two calendar years.

(iii) **Timeliness.** The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the management within the following time periods:

(A) **Annual meetings.** A proposal to be presented at an annual meeting shall be received by the management at the bank's principal executive offices not less than 90 days in advance of a date corresponding to the date of the management's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(B) **Other meetings.** A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

**NOTE.**—In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail—Return Receipt Requested.

(iv) **Number and length of proposals.** The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (k)(2) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this paragraph (k).

(2) If the management opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the bank shall be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the bank or by the Corporation to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the

name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Corporation at the time of filing the management's preliminary proxy material pursuant to paragraph (f) of this section.

(3) The management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(i) If the proposal is, under applicable law, not a proper subject for action by security holders;

**NOTE.**—A proposal that may be improper under applicable law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(ii) If the proposal would, if implemented, require the bank to violate any State law or Federal law of the United States, or any law of any foreign jurisdiction, to which the bank is subject.

(iii) If the proposal or the supporting statement is contrary to any of the Corporation's proxy rules and regulations, including paragraph (h) of this section which prohibits false or misleading statements in proxy soliciting materials;

(iv) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the bank, its management, or any other person;

(v) If the proposal deals with a matter that is not significantly related to the bank's business;

(vi) If the proposal deals with a matter that is beyond the bank's power to effectuate;

(vii) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(viii) If the proposal relates to an election to office;

(ix) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(x) If the proposal has been rendered moot;

(xi) If the proposal is substantially duplicative of a proposal previously submitted to the management by another proponent, which proposal will be included in the management's proxy materials for the meeting;

(xii) If substantially the same proposal has previously been submitted to security holders in the management's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the management's proxy materials relating to any meeting of security holders held within 3 calendar years after the latest such previous submission:

**Provided, That—**(A) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(B) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(C) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(xiii) If the proposal relates to specific amounts of cash or stock dividends.

(4) Whenever the management asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Corporation, not later than 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (f) of this section, or such shorter period prior to such date as the Corporation or its staff may permit, three copies of the following items: (i) the proposal; (ii) any statement in support thereof as received from the proponent; (iii) a statement of the reasons why the management deems such omission to be proper in the particular case; and (iv) where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the management deems the omission of the proposal to be proper and a copy of the supporting opinion of counsel.

8. In § 335.5, paragraph (l) is amended as follows:

(l) **Tender offers.** 1. No person, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security of a bank which is registered pursuant to section 12 of the Act, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security

holders, such person has filed with the Corporation a statement containing the information and exhibits required by Form F-13.

**NOTE.**—See § 335.4(h)(5) for the applicable definition of "beneficial ownership".

(3) \*\*\*

(iv) The information required by Items 1(c); 2(b), 2(e), 2(f), and 2(g); 3; 4; 5; 6; 7; 8; 9; and 10 of Form F-13 (§ 335.54) or a fair and adequate summary thereof.

**Instructions.** 1. Negative responses to any such Item or Subitem of Form F-13 need not be included in the information published or sent or given to security holders.

2. If the information required by Item 9 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained.

(4) Any additional material soliciting or requesting such tender offer subsequent to the initial solicitation or request shall contain the names of the persons making such solicitation or request and the information required by Items 1(c); 2(b), 2(e), 2(f), and 2(g); 3; 4; 5; 6; 7; 8; 9; and 10 of Form F-13 (§ 335.54), or a fair and adequate summary thereof: *Provided, however,* That such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Corporation not later than the time copies of such material are first published or sent or given to security holders.

9. In § 335.7 paragraph (d)(3) is amended by deleting the word "Certification" and substituting the word "Examination."

10. In § 335.7, paragraph (d)(3)(ii)(B) is amended by deleting the word "certificate" and substituting the word "report."

11. In § 335.7, paragraph (d)(3)(ii)(C) is amended to read as follows:

§ 335.7 Form and content of financial statements.

(d) \*\*\*

(3) \*\*\*

(ii) \*\*\*

(C) **Opinions to be expressed.** The independent public accountant's report shall state clearly: (1) The opinion of the accountant in respect of the financial statements covered by the report and the accounting principles and practices reflected therein; and (2) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have

a material effect on the financial statements.

12. In § 335.7, paragraph (d)(3)(iv) is amended by: (1) deleting the word "certification" and substituting the word "examination", and (2) by deleting the word "certificate" in four places and substituting the word "examination" in those four places.

13. In § 335.7, paragraph (e)(14)(vi) is amended by deleting the term "(e)(12)(iii)" and inserting the term "(e)(14)(iii)."

14. In § 335.7, paragraph (e) is amended as follows:

(e) \*\*\*

(15) \*\*\*

(iv) **Income tax expense.** (A) Disclosure shall be made in the income statement or a note thereto, of the components of income tax expense, including: (1) Taxes currently payable; (2) the net tax effects, as applicable, of (i) timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, warranty costs, etc., where the amount of such tax effect exceeds five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate and the aggregate amount of timing differences is less than five percent of such computed amount, disclosure of each of the separate types of timing differences may be omitted) and (ii) operating losses; and (3) the net deferred investment tax credit. Amounts applicable to U.S. Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component. Amounts applicable to foreign and other income taxes each of which are less than five percent of the total of the major component need not be separately disclosed.

(B) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess, the year (or years) of occurrence and the reasons therefor.

(C) Provide a reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal



income tax rate, and the total difference to be reconciled is less than five percent of such computed amount no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(vi) *Leased assets and lease commitments.* Any contractual arrangement which has the economic characteristics of a lease shall be considered a lease for purposes of this paragraph (e)(15)(vi). For purposes of this paragraph (e)(15)(vi) a financing lease is defined as a lease which during the noncancelable lease period, either (A) covers 75 percent or more of the economic life of the property or (B) has terms which assure the lessor a full recovery of the fair market value (which would normally be represented by his investment) of the property at the inception of the lease plus a reasonable return on the use of the assets invested subject only to limited risk in the realization of the residual interest in the property and the credit risks generally associated with secured loans. The disclosures set forth under paragraph (e)(15)(vi)(1) and (2) below are only required if gross rental expense in the most recent fiscal year exceeds one percent of consolidated revenues.

(1) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is required shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals. Rentals on noncapitalized financing leases shall be shown separately for both categories of rentals reported.

(2) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate (with disclosure of the amounts applicable to noncapitalized financing leases) for (i) each of the five succeeding fiscal years; (ii) each of the next three five year periods; and (iii) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this paragraph (e)(15)(vi), a noncancelable lease is defined as one

that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(3) Additional disclosures shall be made to report in general terms: (i) The basis for calculating rental payments if dependent upon factors other than the lapse of time; (ii) existence and terms of renewal or purchase options, escalation clauses, etc.; (iii) the nature and amount of related guarantees made or obligations assumed; (iv) restrictions on paying dividends, incurring additional debt, further leasing, etc.; and (v) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(4) For all noncapitalized financing leases there shall be disclosed: (i) The present values of the minimum lease commitments in the aggregate and by major categories of properties, such as real estate, and equipment. Present values shall be computed by discounting net lease payments (after subtracting, if practicable, estimated or actual amounts, if any, applicable to taxes, insurance, maintenance, and other operating expenses) at the interest rate implicit in the terms of each lease at the time of entering into the lease. Such disclosure shall be made as of the date of any balance sheet required. If the present value of the minimum lease commitments is less than five percent of the sum of long-term debt, stockholders' equity and the present value of the minimum lease commitments, and if the impact on net income required to be disclosed under (iv) below is less than three percent of the average net income for the most recent three years, this disclosure is not required.

(ii) Either the weighted average interest rate (based on present value) and range of rates or specific interest rates for all lease commitments included in the amount disclosed under paragraph (e)(15)(vi)(4)(i) of this section.

(iii) The present value of rentals to be received from existing noncancelable subleases of property included under paragraph (e)(15)(vi)(4)(i) of this section based on the interest rate implicit in the terms of the subleases at the times of entering into the subleases.

(iv) The impact upon net income for each period for which an income statement is required if all noncapitalized financing leases were capitalized, related assets were amortized on a straightline basis and interest cost was accrued on the basis of the outstanding lease liability. The amounts of amortization and interest cost included in

the computation shall be separately identified. If the impact on net income is less than three percent of the average net income for the most recent three years, that fact may be stated in lieu of this disclosure. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test.

(viii) *Disagreements on accounting and financial disclosure matters.* If, (A) within the twenty-four months prior to the date of the most recent financial statements, a Form F-3 has been filed reporting a change of accountants, (B) included in the Form F-3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (C) during the fiscal year in which the change of accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (D) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

15. In § 335.41, the General Instructions are amended by revising the first sentence of the second paragraph to read as follows:

Section 335.41(s) requires that six copies of each registration statement (including financial statements) and two copies of each exhibit and each other document filed as a part thereof, shall be filed with the Corporation.

16. In § 335.41, Item 1(b)(2) is amended by deleting the present paragraph (b)(2) and substituting the following:

#### FORMS

§ 335.41 Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-1).

Item 1. . . . .  
(b) . . . . .

(2) If a material portion of the bank's deposits has been obtained from a single

person or a few persons (including Federal, State and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loans is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank;

17. In § 335.41, Item 10 is amended by deleting the present Instruction 1 and substituting the following:

Item 10. . . . .  
Instructions. 1. Notwithstanding Instruction 2 to this Item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

18. In § 335.42, Item 1(b)(2) is amended by deleting the present paragraph (b)(2) and substituting the following:

#### FORM F-2

§ 335.42 Form for annual report of bank (Form F-2).

Item 1. . . . .  
(b) . . . . .

(2) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loans is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank;

19. In § 335.42, Item 2, Instruction 6 is revised as follows:

Item 2. . . . .  
Instructions. . . . .

6. For any previously reported material charge or credit to income of an unusual or infrequent nature in which an amount of cost was estimated to be incurred in the fiscal year being reported on or the prior fiscal year, summarize such transaction and state the amounts of such estimated cost and the amounts of the actual cost incurred in such periods, the reasons for differences in estimated or actual amounts, if any, and provide a detailed reconciliation showing all charges and credits to any reserve provided.

20. In § 335.42, Item 5 is amended by deleting the present Instruction 1 and substituting the following:

Item 5. . . . .

Instructions. 1. Notwithstanding Instruction 2 to this Item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

21. In § 335.42, Item 5 is amended by deleting Instruction 4 and substituting the following:

Item 5. . . . .  
Instructions. . . . .

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

22. In § 335.43, Item 1 is amended as follows:

§ 335.43 Form for current report of a bank (Form F-3).

Item 1—Changes in Control of Bank.

(a) If, to the knowledge of management, a change in control of the bank has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined in section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Corporation.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees, unless confidential treatment has been requested pursuant to section 13(d)(1)(B) of the Act in which case the identity of the lending bank shall be omitted.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the bank, or any of its parents, known to

management, the operation of the terms of which may at a subsequent date result in a change in control of the bank.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

(c) If the source of all or any part of the funds used to acquire control of the bank is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the registrant bank maintains or would maintain a correspondent deposit account at such lending bank.

23. In § 335.43, Item 3 is amended by deleting the present Instruction 1 and substituting the following:

Item 3. . . . .

Instructions. 1. Notwithstanding Instruction 2 to this Item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

24. In § 335.43, Item 3 is amended by deleting Instruction 5 and substituting the following:

Item 3. . . . .  
Instructions. . . . .

5. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

25. In § 335.43, Items 9 and 10 are deleted and Items 11, 12, 13 and 14 would be renumbered Items 9, 10, 11, and 12.

26. In § 335.44, paragraph J is amended as follows:

§ 335.44 Form for quarterly report of bank (Form F-4) to be filed pursuant to § 335.4(i).

J. *Other Financial Information.* The bank may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the bank's business, major uncertainties currently facing the bank, significant accounting changes under consideration and the dollar amount of standby letters of credit. In addition, the bank shall indicate whether any Form F-3 was required to be filed during the most recently com-



pleted fiscal quarter reporting a change in independent accountants.

27. Section 335.47 is amended as follows:

§ 335.47 Form for statement to be filed pursuant to § 335.4(h)(2) of Part 335 (Form F-11).

Form F-11

Statement to be filed pursuant to § 335.4(h)(2) of Part 335 by  
Relating to the securities of

(Name and address of bank)

Item 7.—Material To Be Filed as Exhibits.

Copies of all written agreements, contracts, arrangements, understandings, plans or proposals relating to (1) the borrowing of funds to finance the acquisition as disclosed in Item 3, (2) the acquisition of issuer control, liquidation, sale of assets, merger, or change in business or corporate structure or any other matter as disclosed in Item 4, and (3) the transfer or voting of the securities, finders fee, joint ventures, options, puts, calls, guaranty of loans, guaranty against loss or of profits, or the giving or withholding of proxies as disclosed in Item 6 shall be filed as exhibits.

SIGNATURE

28. In § 335.51, Item 5(e) is amended as follows:

§ 335.51 Form for proxy statement; statement where management does not solicit proxies (Form F-5).

Item 5.

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined in section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Corporation.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledge-

es, unless confidential treatment has been requested pursuant to section 13(d)(1)(B) of the Act in which case the identity of the lending bank shall be omitted.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

29. A new § 335.54 is added to read as follows:

§ 335.54 Tender offer statement to be filed pursuant to section 14(d)(1) of the Securities Exchange Act of 1934 (Form F-13).

Form F-13

Statement to be filed pursuant to § 335.5(l) of Part 335.

(Amendment No. —)

(Name of Subject Bank)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder)

Instruction. Two copies of this statement, including all exhibits, and four additional copies of this statement, including only the exhibits described in Item 11(a) of this statement, should be filed with the Corporation.

General Instructions. A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be prepared so as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or Subitem of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2-7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii)

each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation. Executive officer shall mean president, secretary, treasurer and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to this Form F-13 disclosing all material changes in the items of this Form F-13 and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Form F-11 (§ 335.47) with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Form F-11 (§ 335.47) and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D. Provided: That the bidder indicated on the cover sheet of this statement that it is amending its Form F-11 (§ 335.47) by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term "bidder" means any person on whose behalf a tender offer is made; and  
(ii) The term "subject bank" means any bank whose securities are sought by a bidder pursuant to a tender offer.

Item 1—Security and Subject Bank.

(a) State the name of the subject bank and the address of its principal office;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Corporation by the subject bank unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations) for each quarterly period during the past two years.

Item 2—Identity and Background.

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, lim-

ited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (h) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on;

Instruction. If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether, or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding, was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or State securities laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order; and

Instruction. While a negative answer to this Subitem is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

Item 3—Past Contracts, Transactions or Negotiations With the Subject Bank

(a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this schedule, which has occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and:

(i) The subject bank or any of its affiliates which are corporations: Provided, however, That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the subject bank's consolidated revenues (which may be based upon information contained in the most recently available filing with the Corporation by the subject bank, unless the bidder has reason to believe otherwise); (i) for the fiscal year in which such transaction occurred, or (ii) for the portion of the current

fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors, or affiliates of the subject bank which are not corporations, if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments, in the case of any lease or other agreement providing for periodic payments or installments, exceeds \$40,000.

(b) Describe any contracts, negotiations or transactions which have occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject bank or its affiliates concerning: A merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 4—Source and Amount of Funds or Other Consideration.

(a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined in section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Corporation.

(d) If the source of all or any part of the funds to be used in the tender offer is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the subject bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 5—Purpose of the Tender Offer and Plans or Proposals of the Bidder.

State the purpose or purposes of the tender offer for the subject bank's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject bank or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject bank or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject bank including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject bank;

(e) Any other material change in the subject bank's corporate structure or business;

(f) Causing a class of securities of the subject bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject bank becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act.

Item 6—Interest in Securities of the Subject Bank.

(a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Corporation by the subject bank unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this Item or by any executive officer, director or subsidiary of such person.

Instructions. 1. The description of a transaction required by Item 6(b) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected.

2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Corporation pursuant to § 335.5(l)(6), such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it should be filed with the Corporation promptly but in no event later than two business days after the date of such filing, and if material, should be disclosed to security holders of the subject bank in a manner similar to that in which the tender offer was first published, sent or given to such security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

Item 7—Contracts, Arrangements, Understandings, or Relationships With Respect to the Subject Bank's Securities.

Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C to this Form F-13) and any person with respect to any securities of the subject bank, (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts



or calls, guaranty of loans, guaranty against loss, or the giving or withholding of proxies) naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that, disclosure of standard default and similar provisions contained in loan agreements need not be included.

**Item 8—Persons Retained, Employed or To Be Compensated.**

Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

**Item 9—Financial Statements of Certain Bidders.**

Where the bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder. *Provided*, That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

**Instructions.** 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with SEC Form 10 as amended (17 CFR 249.210) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with SEC Form 20 (17 CFR 249.220) for a foreign bidder which is otherwise eligible to use such form.

2. If the bidder is subject to the periodic reporting requirements of sections 13(a) or 15(d) of the Act, financial statements contained in any document filed with the Corporation under the Act may be incorporated by reference in this Form F-13 solely for the purposes of this Form F-13: *Provided*, That such financial statements substantially meet the requirements of this Item; an express statement is made that such financial statements are incorporated by reference; the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and an indication is made where such information may be inspected and copies obtained. Financial statements which are required to be presented in comparative form for two or more fiscal years or

periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

3. If the bidder is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if such financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

**Item 10—Additional Information.**

If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of the persons listed in General Instruction C or any of its subsidiaries and the subject bank or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding required to be disclosed pursuant to Items 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of anti-trust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

**Instruction.** In connection with this Sub-Item, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the Corporation on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

**Item 11—Material To Be Filed as Exhibits.**

Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule;

**Instruction.** The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this Form F-13.

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this Form F-13;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) In an exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information required to be included therein by SEC Rule 434b (17 CFR 230.434b) of that Act; and

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

**Signature.** After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date\_\_\_\_\_

(Signature)

(Name and Title)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

30. In § 335.71, paragraph B2(i) is amended by deleting the present paragraph B2(i) and substituting the following:

**§ 335.71 Form for financial statements (Form F-9A, B, C, D and E).**

B. . . .  
2. . . .

(1) *Provision for possible loan losses.* (1) Banks which provide for loan losses on a reserve basis shall include an estimated amount for loan losses. Such amount shall be determined by management in light of past loan loss experience and evaluation of potential loss in the current loan portfolio. All banks on a loan loss reserve basis must report against this item an amount sufficient to bring the balance of the allowance for possible loan losses to an adequate level to absorb anticipated losses that management might reasonably expect, based upon its appraisal of the condition of the current loan portfolio.

(2) Banks which do not provide for loan losses on a reserve basis shall include the amount of actual net chargeoffs (losses less recoveries) for the current year.

(3) Furnish in a note to financial statements an explanation of the basis for determining the loan loss provision.

(FR Doc. 78-35924 Filed 12-27-78; 8:45 am)

[6720-01-M]

**Title 12—Banks and Banking**

**CHAPTER V—FEDERAL HOME LOAN BANK BOARD**

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

[No. 78-732]

**PART 563—OPERATIONS**

**Amendment Concerning Mortgage Insurance**

DECEMBER 21, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

**SUMMARY:** This amendment modifies an exception to regulations which prohibit an FSLIC-insured institution from insuring loans with a mortgage insurance company in which the institution, its service corporation(s), or insiders thereof have an ownership interest in excess of specified limits. The modification limits the scope of this exception.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Telephone number: (202) 377-6440.

**SUPPLEMENTARY INFORMATION:** Section 563.44 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.44) prohibits an FSLIC-insured institution from insuring loans with a mortgage insurance company (MIC) in which the institution, its service corporation(s), or officers, directors, and controlling persons thereof have an ownership interest in excess of specified limits. Paragraph (c) of the regulation provides an exception for investment in any MIC which (1) was in existence on March 11, 1976 (the effective date of the regulation) and (2) is entirely owned by insured institutions no one of which owns more than 25 percent of any class of equity securities of the MIC. The only MIC known to qualify for this exception is the Pennsylvania Mortgage Insurance Company (PAMICO).

By Resolution No. 77-445 of July 19, 1977 (42 FR 37822-37823), the Bank Board proposed an amendment which would have modified paragraph (c) to (1) to prevent an insured institution from increasing its investment in an MIC under the exception and (2) prevent an insured institution whose interest was less than the prescribed

maximum limits from increasing its interest to exceed those limits. The intended effect of that proposal was to gradually "ratchet down" permitted ownership of PAMICO by insured institutions insuring their loans with it.

By Resolution No. 78-248 of April 18, 1978 (43 FR 17833-17834), the Bank Board withdrew Board Resolution No. 77-445 and proposed instead to remove ownership of MICs by insured institutions from the § 563.44 limitations and thereby permit development of other companies similar to, and competitive with, PAMICO. To protect borrowers from overreaching by insured institutions requiring that their loans be insured by a particular MIC, the Bank Board also proposed to revoke the exception for private mortgage insurance from the prohibition in § 563.35(a) against insured institutions requiring borrowers to contract for insurance from any particular person or organization. The premise for these proposed amendments was that, with adequate regulatory protection for borrowers, investment in MICs might be a proper and profitable corporate opportunity for insured institutions.

**SUMMARY OF COMMENTS**

Fifty-four respondents submitted written public comments on the proposal; several commented more than once. In addition, representatives of 10 organizations including PAMICO and MICA (The Mortgage Insurance Companies of America) attended a public meeting held on June 26 on the proposal by the Bank Board's General Counsel at the request of MICA.

Comment divided sharply on the merits of the proposed amendment of § 563.44 to permit FSLIC-insured institutions to insure loans with MICs in which they have a substantial ownership interest. Ten respondents favored the proposal; forty-four opposed it. Comment addressed to the proposed amendment of § 563.35 to give borrowers the right to select the insurer of their loans was almost uniformly negative.

One respondent favoring the proposal noted that it would probably reduce the cost of mortgage insurance, citing PAMICO's recent price reductions. Respondent also noted that MIC ownership by savings and loans would "keep profit from mortgage insurance within the home loan business." Respondent also noted, however, that savings and loans might tie loans to purchase of mortgage insurance (despite the § 563.35 anti-tie-in provision), require unneeded mortgage insurance, and/or experience increased defaults due to lack of the discipline of a second evaluation of loans by independent MICs. Based on these considerations, respondent supported the amendment, but suggested reinforcement of the

anti-tie-in prohibition by (1) requiring signed statements from borrowers of their knowledge of their right to choose the MIC and (2) aggressive monitoring by the Bank Board.

Another respondent supported the proposed amendment to § 563.44, citing PAMICO's recent reduction of its premiums. Respondent suggested that institutional MIC ownership is a reasonable extension of regulatorily permissible self-insurance through establishment of specific reserves.

The Wyoming Insurance Department strongly supported the proposed amendment to § 563.44, citing as unique in the mortgage insurance industry PAMICO's reduction of premiums on loans in Wyoming based on low incidence of losses there.

Many respondents opposing the proposed amendment cited the Alger Report on the collapse of the mortgage insurance industry during the 1930s, which attributed that collapse in part to ownership of MICs by lenders. Also cited were the study of the mortgage insurance industry done in 1974 for the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association by the Arthur D. Little Co. and the Federal Reserve's disapproval in 1974 of mortgage insurance as a bank holding company activity.

Many opponents of the proposal noted that lender/owners of MICs might tend to generate profits by requiring unnecessary mortgage insurance and that the lack of the "discipline" of evaluation of loans and the lending practices of lender/owners might lead to increased defaults of bad loans made on the strength of insurance of a "captive" MIC.

The Mortgage Insurance Companies of America argued that there is already adequate competition in the mortgage insurance industry because no state is served by fewer than 4 MICs and 20 states are served by over 10. It noted that the share of the market of the largest MIC (Mortgage Guarantee Insurance Company) has decreased during each of the last 12 quarters and is now approximately 38% as opposed to 100% in 1957.

Opponents of the proposal argued that it would lead to proliferation of small, financially weak MICs with geographically concentrated insurance risk exposing them to unacceptable danger from local or regional economic catastrophe.

Argument was also made that there is little return to investors during the early years of an MIC's growth, and that MIC ownership is therefore bad business for savings and loans. PAMICO noted in rebuttal of this argument that it now has 17 savings and loan owners and others have expressed interest in investing in it.



As already noted, comments directed to the proposed application to private mortgage insurance of the §563.35 anti-tie-in prohibition were virtually all negative. Many respondents argued that few borrowers are qualified to judge the quality of mortgage insurance and that since the insurance is solely for the protection of the lender the borrower would choose solely on the basis of the lowest premium. It was argued that lenders should in their own protection spread their mortgage insurance business among several companies and to do so they need the right to choose the MIC. A number of savings and loans argued, on the other hand, that once they have decided which MIC offers the best protection they should be able to give that company all their business.

Several respondents suggested that if the Bank Board did extend the anti-tie-in prohibition to private mortgage insurance it should do so only for savings and loans with MIC ownership interests and/or only require that borrowers be permitted to select from a list of MICs determined by savings and loans to offer adequate protection.

#### DISCUSSION AND DECISIONS

With respect to the arguments summarized above, the Bank Board notes that although the costs and benefits of the proposed amendments are easily stated their quantification and comparison is difficult. In the Bank Board's view PAMICO's 4-years of operation without known abuse and with substantial success in lowering its premiums and other charges argues strongly in favor of Bank Board action which permits PAMICO's continued existence and operation.

On the other hand, the Bank Board is persuaded by further reflection in

the light of comments by opponents of the proposal, including to some extent PAMICO itself, that the proposed amendment to §563.44 should not be adopted. It is especially persuaded that there is substantial benefit in the "discipline" of arm's length evaluation and bargaining which presently occurs between savings and loans and MICs.

In view of the strong arguments made against the proposal and the fact that no compelling reason exists for opening the door at this time to creation of additional PAMICO-type MICs, the Bank Board has decided to retain the present "grandfather" exception applicable only to investment in PAMICO, and modify it slightly to both facilitate PAMICO's efforts to broaden its ownership base (and thus reduce the percentage holdings of its owners) and to "ratchet down" any reductions by PAMICO's owners of their ownership in it.

The amendment hereby adopted is therefore similar to that proposed by Board Resolution No. 77-445 in that it continues the present "grandfather" exception only for investment in PAMICO and excludes from the exception PAMICO owners which reduce their ownership interests and increase them again beyond a new 2% limit (the "ratchet down" effect). The Bank Board believes that this limitation should not unduly hamper PAMICO in its efforts to broaden its ownership base (and thus reduce the percentage ownership of its investors in accordance with the basic thrust of §563.44).

As to the proposed amendment to §563.35, the Bank Board has decided that such amendment is not needed at this time. The principal reason for this proposed amendment was the likelihood that the proposed amendment to §563.44 would lead to increased invest-

ment by insured institutions in MICs, with resulting increased probability of overreaching by such institutions in the selection of an MIC. In view of its decision not to adopt the proposed amendment to §563.44 and of the substantial and reasoned opposition to the proposed amendment of §563.35 noted above, the Bank Board has decided not to adopt the latter amendment. The Bank Board will, however, continue to monitor the practices of insured institutions with respect to placement of mortgage insurance and will take appropriate regulatory action with respect to any such practices which appear to result in inadequate protection to the institutions or unfair or unreasonable costs to their borrowers.

Accordingly, the Bank Board hereby amends §563.44(c) to read as follows:

§ 563.44 Loans involving mortgage insurance.

(c) *Exception.* Paragraph (b)(4) of this section does not apply to investment in any mortgage insurance company in existence on March 11, 1976, which is entirely owned directly or indirectly by insured institutions if such investment made or increased after December 21, 1978, does not exceed two percent of such company's outstanding equity securities.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. §§ 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

J. J. FINN,  
Secretary.

(FR Doc. 78-36137 Filed 12-27-78; 8:45 am)

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-50]

Agricultural Marketing Service

[7 CFR Part 1126]

[Docket No. AO-231-A46]

MILK IN THE TEXAS MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This final decision provides for changes in the present order provisions based on industry proposals considered at a public hearing held June 13-14, 1978. The amendments would modify the basis on which a person may qualify as a "producer-handler" under the order. They also would allow handlers to divert milk between pool distributing plants and would modify the payment requirements of the order. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area. Cooperative associations will be polled to determine whether producers favor the issuance of the proposed amended order.

**FOR FURTHER INFORMATION CONTACT:**

Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing: Issued May 26, 1978, published June 1, 1978 (43 FR 23725). Suspension Order: Issued June 22, 1978, published June 27, 1978 (43 FR 27776). Partial Recommended Decision: Issued August 4, 1978, published August 8, 1978 (43 FR 35047). Partial Final Decision: Issued September 1, 1978, published September 8, 1978 (43 FR 40030). Final Order: Issued September 26, 1978, published September 29, 1978 (43 FR 44824). Recommended Decision: Issued October 11, 1978, published October 16, 1978 (43 FR 47534).

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Texas marketing area. The hearing was held, pursuant to the provisions of the Agri-

cultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Dallas, Texas on June 13-14, 1978, pursuant to notice thereof issued on May 26, 1978 (43 FR 23725).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Marketing Program Operations, on October 11, 1978, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the partial recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

#### INDEX OF CHANGES

Under the heading "Producer-handler provisions," four paragraphs are added following paragraph 8.

The material issues on the record of the hearing relate to:

1. The "dairy farmer for other markets" provision.
2. Diversions to nonpool plants.
3. Diversions between pool plants.
4. Producer-handler provisions.
5. Classification of shrinkage and products that are dumped and disposed of for animal feed.
6. Partial payments to a cooperative association.

This decision deals only with issues 3 through 6. A previous decision issued September 1, 1978, dealt with issues 1 and 2.

#### FINDINGS AND CONCLUSIONS

The following findings and conclusions on issues 3 through 6 are based on evidence presented at the hearing and the record thereof:

3. *Diversions between pool plants.* The proposal to revise the producer milk definition to allow diversions of milk between pool distributing plants should be adopted.

Currently, the order permits producer milk to be diverted from pool distributing plants to pool supply plants and to pool balancing plants operated by cooperative associations.

A handler who operates 2 distributing plants in Dallas (Zone 1) and a distributing plant at Tyler, Texas (Zone 2) proposed the change, which was not

opposed. The handler indicated that he prefers to assign his producers to a particular plant and use that plant's payroll to make settlement for the monthly milk production of his producers. It has been his experience that the listing of a producer on only 1 payroll avoids confusion for the producer and the handler's personnel. However, in order to maintain a producer on only 1 payroll, it has been necessary under the current order provisions for the handler to physically receive the total monthly milk production of the producer at 1 of his pool plants and then transfer milk of such producer, if needed, to the other 2 pool plants operated by the handler. This method of operation has resulted in additional expense for the handler since the milk must be unloaded at the plant where the producer has been assigned and then reloaded for delivery to other plants operated by the handler.

The handler pointed out, too, that the location of the producers relative to his 3 plants is such that it costs about the same for the milk of a producer to be delivered directly from the farm to any of his 3 plants. The handler proposed, therefore, that he be permitted to associate the milk of his producers with a particular plant and then divert milk from such plant to his other plants as needed.

The order should promote the efficient handling of milk by permitting diversions between pool distributing plants. The change proposed herein will allow the diverting handler to maintain only one payroll in accounting for the total monthly milk production of his producers, irrespective of the plant to which the milk may actually be delivered. In this way a distributing plant operator may avoid unnecessary and costly movements of milk merely for the purpose of associating a producer with a specific distributing plant for payroll purposes.

The pricing point for milk diverted from a pool distributing plant would be the same as currently provided under the order for milk diverted to any other plant. The milk would be priced at the plant to which diverted.

4. *Producer-handler provisions.* The order should be revised to modify the present limit on fluid milk products that a producer-handler may receive from pool plants by including within the limit not only the products received at his plant but those received at any other point within his distribu-



tion system. The proposal that would require a producer-handler to operate the entire distribution system through which he disposes of Class I milk should not be adopted.

The present order specifies that a producer-handler is any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production and pool plants. Any such receipts from pool plants during the month may not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds. A producer-handler may not dispose of any other source milk in the form of a fluid milk product except through the addition of nonfat milk solids to fortify fluid milk products received from his own farm or from pool plants. To qualify as a producer-handler, such person must provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

A handler who operates regulated distributing plants in the market proposed that the milk distribution system of a producer-handler, as well as the dairy farm and processing plant, be the personal enterprise and risk of the same person. The handler's proposal also would require a producer-handler to treat any product received within his distribution system as though it were received at his plant in determining whether or not his receipts from pool plants exceeded the allowable limits contained in the order.

Proponent claimed that the intent of this proposal was to prevent the possibility of a producer-handler circumventing the present order provisions pertaining to the restrictions on receipts of milk supplies from sources other than his own farm. This proposal and the testimony given by the proponent were supported by the cooperative association that represents a majority of the producers who supply the Texas market.

A producer under the order who plans to qualify as a producer-handler at some future date opposed the proposal at the hearing. Opposition was expressed also by a producer-handler in his post-hearing brief. These persons claimed that no evidence was presented on the record to support imposing further restrictions on producer-handlers. Opponents held that the proposal was based only on speculation and predictions. The producer claimed that adoption of the proposal would prevent him from obtaining producer-handler status. The produc-

er-handler alleged that the proposed change would likely put him out of business. Both claimed it would be impractical to own their entire distribution system and distribute only milk products from their own farm.

To assure that the exemption of producer-handlers from the pooling and pricing provisions of the order does not have an adverse impact on the market, the present order provisions were drafted to require such persons to operate basically in a self-sufficient manner. However, as indicated, producer-handlers may receive limited quantities of fluid milk products from pool plants. Under the present application of the order provisions, the limitation has applied only to fluid milk products actually received at the producer-handler's processing plant. Thus, a producer-handler who operates his own distribution routes could pick up packaged fluid milk products at pool plants or distribution depots of other handlers and distribute these products, presumably along with those from his own plant, without bringing them into his plant. In this manner, he could circumvent the present limitation on the amount of milk that may be obtained from pool plants.

To effectively carry out the intent of the limitation on purchases of milk from pool plants, the order should preclude the opportunity to circumvent this limitation. Accordingly, the order should specify that the limit on receipts of fluid milk products from pool plants shall include such products which a producer-handler obtains at a location other than his processing plant for distribution on his routes. Although there was no indication that producer-handlers are circumventing the current limitation on receipts from pool plants, this order change is proper since it merely carries out the initial intent of the limitation.

It is not necessary on the basis of this record to require a producer-handler to operate the distribution system through which all his route disposition in the marketing area is made. There is no indication that producer-handlers are causing any disorderly marketing conditions that would warrant the adoption of the proposal. The proponent handler provided no evidence concerning the actual operations of producer-handlers in the market and their competitive impact on regulated handlers. Also, there was no testimony by other witnesses that suggested any need for the proposal. Accordingly, the proposal is denied.

The handler who proposed that a producer-handler assume the full risk of his milk distribution system excepted to the recommended denial of this proposal. In his exceptions, the handler restated the arguments that he presented at the hearing in support of

his proposal. It is concluded that no basis exists for changing the recommended decision in this regard.

A producer who testified at the hearing that he was contemplating becoming a producer-handler at some future time excepted to the proposed revision of the producer-handler definition. He alleged that (1) there was no evidence presented at the hearing of any need for a change in the producer-handler definition, (2) the original intent of the limitation on the quantity of fluid milk products that a producer-handler may obtain from a pool plant operator was to limit the producer-handler's purchases of milk for his processing plant, (3) the proposed revision could be misinterpreted by the market administrator to mean something other than what is intended, and (4) the proposed revision would restrict producer-handlers to a greater extent than pool plant operators since the distribution system of a pool plant is not considered a part of the pool plant.

The arguments presented by the exceptor are without merit. The exemption from the pricing and pooling provisions of the order that is accorded a producer-handler is conditioned upon the producer-handler operating in basically a self-sufficient manner in supplying his retail sales outlets. If the order were to permit a producer-handler to receive an unlimited quantity of fluid milk products from a pool plant at locations other than the producer-handler's processing plant, such producer-handler could not be considered as operating in basically a self-sufficient manner. Therefore, unless the order is amended as provided herein to specify that the limit on the quantity of fluid milk products that a producer-handler may receive from pool plants must include not only products received at his processing plant but those received at any other point within his distribution system, the limits contained in the current order provisions can readily be circumvented. Unless the limits are applied in the manner provided herein, there is no means of assuring that a producer-handler is operating in the manner intended when the current provisions of the order were made effective.

The revision provided herein would not preclude a producer-handler from delivering his fluid milk products to a sales outlet that also acquires fluid milk products from other sources. However, if the arrangements for the additional fluid milk requirements of the outlet are made by the producer-handler rather than the operator of the outlet, the additional fluid milk products should be regarded as a receipt of the producer-handler.

5. *Classification of shrinkage and products that are dumped or disposed*

*of for animal feed.* The proposal to combine certain plant shrinkage, animal feed and dumped products into a single use category and to permit up to 3 percent of a plant's receipts of bulk fluid milk products and bulk fluid cream products claimed in such use to be classified as Class III milk should not be adopted.

The order presently classifies as Class III milk any fluid milk products, fluid cream products, eggnog, yogurt, or similar filled products that are dumped by a handler or disposed of for animal feed. In the case of shrinkage, the order permits up to 2 percent of a plant's receipts of producer milk to be classified as Class III milk. If the plant's receipts are from a cooperative association in its capacity as a handler on bulk tank milk, then the 2 percent allowance is divided between the cooperative and the plant operator, with the cooperative receiving a 0.5 percent allowance and the plant operator receiving 1.5 percent. However, if the plant operator buys the milk on the basis of farm weights and tests, he gets the full 2 percent allowance. One and one-half percent of receipts also is the maximum allowable shrinkage that can be assigned to Class III with respect to receipts of bulk milk from other plants. To the extent that the quantity of shrinkage in these cases exceeds the specified limits on Class III uses, the order provides that the excess shall be classified as Class I milk. All shrinkage assigned to receipts of other source milk for which Class II or Class III uses is requested is classified as Class III milk.

A handler who operates a pool distributing plant proposed that plant shrinkage now subject to the 2 percent limit, animal feed and dumped fluid milk products be combined into a single use classification. He would then allow up to 3 percent of a plant's receipts in such use category to be classified as Class III milk. Proponent claimed that his objective in proposing the revision is to simplify the procedures and reduce the costs on the part of the market administrator and handlers in accounting for animal feed and dumped products. He pointed out that his proposal would minimize delays in disposing of route returns that can not be salvaged and thereby reduce the health hazards associated with disposing of such products. Proponent modified his proposal at the hearing to recognize circumstances in which a handler may need to dispose of a large quantity of receipts due to an unusual situation. In such circumstance, he would permit the handler to dump such milk and classify such loss as Class III milk without limit provided that the market administrator is notified of the handler's intention to

dump the milk and is given an opportunity to verify such dumpage.

A handler who operates three pool distributing plants opposed the proposal. Opponent claimed that combining shrinkage, animal feed and dumped products into a single classification would not simplify the accounting for such products. The plant operator also maintained that animal feed and dumped products are distinct utilizations which can be measured, tested and verified. He pointed out that shrinkage, on the other hand, is a residual figure and is a loss that cannot be measured, tested or verified.

The principal cooperative association supplying handlers in the Texas market also opposed any change in the current method of classifying shrinkage, animal feed, and dumped milk products. The cooperative contended that the amount of skim milk that could be classified as Class III milk under proponent's proposal is greater than is justified by the record evidence. In that connection, the cooperative contended that handlers would receive an increase in the amount of milk that can be classified as Class III by not maintaining adequate records of accountability. In addition, the cooperative contended that the amount of time required by the market administrator's office to audit the books and records of handlers would not be reduced since the same auditing procedures now used would have to be continued. Also, under proponent's proposal the market administrator's employees would still be required to monitor the dumping of milk in those situations where a large quantity of milk must be dumped.

Handlers normally experience some shrinkage losses in milk processing operations and, occasionally, must dispose of spoiled products either by dumping the products or disposing of them for animal feed. Because a handler's costs are affected by the quantities of these products that are priced as Class I and Class III milk, proponent's proposal to combine these three categories of milk use into a single classification and allow up to 3 percent of the handler's receipts in such uses to be classified as Class III milk would have varying impacts on the cost of milk to the various handlers in the market. The proposal could reduce the cost for those handlers who otherwise would have excess shrinkage. This could occur in situations where a handler has little or no dumped products or animal feed but has shrinkage that exceeds the present allowable limits for Class III use. Other handlers who otherwise would have all of their shrinkage, animal feed usage and dumped products classified as Class III milk could have some of such usages classified as Class I milk in the event

the quantity of dumped products and animal feed uses exceeds 1 percent of producer receipts at such plant.

An analysis of data for the market reveals that the adoption of proponent's proposal would be to the disadvantage of a number of pool plant operators. An examination of data for May 1977 reveals that as many as one-third of the pool plant operators could be disadvantaged.

For example, 16 of the 44 pool plants regulated by the Texas milk order disposed of more than one percent of their receipts as animal feed, whereas proponent would have limited a handler's uses for animal feed and dumped products (excluding unusual losses) to one percent of receipts. Three of the 16 plants had animal feed disposition in excess of 1.5 percent while two plants disposed of more than 2 percent of their receipts as animal feed. On the basis of data for November 1977, 9 of the 44 pool plants disposed of more than one percent of their receipts of skim milk or butterfat as animal feed. Three of the 9 pool plants disposed of more than 1.5 percent of their receipts in such uses.

An analysis of data submitted by proponent with respect to his plant's operation reveals that the percentage of his plant's receipts disposed of as animal feed and dumped milk products during some months of the year also exceeded the limit that he proposed. While proponent is willing to accept a Class I classification for milk that exceeds the limits he has proposed, there is no reason to deny other handlers a Class III classification for milk for which they can produce records substantiating the use of milk receipts as either animal feed disposition or as dumped milk products.

The reasons set forth by proponent for adopting his proposal are not compelling reasons for changing the current classification provisions as they relate to shrinkage, animal feed and dumped products. Accordingly, the proposal is denied.

6. *Partial payments to a cooperative association.* The order should be revised to allow a handler to elect whether or not to adjust the announced Class III price for the preceding month by the butterfat differential to reflect the butterfat content of bulk fluid milk products received from a cooperative's pool plant in making partial payment for such milk. There was no opposition expressed at the hearing to the proposed change.

The order currently provides that a handler who receives bulk fluid milk products from a pool plant operated by a cooperative association shall make 2 payments during the month to the market administrator in settlement for such purchases. The handler must make a partial payment on or



before the 26th day of the month for those products received during the first 18 days of the month at the Class III price for the preceding month adjusted by the butterfat differential. On or before the 16th day after the end of each month, the handler must make payment for all bulk fluid milk products received during the month from a cooperative's pool plant at the applicable class prices adjusted by the butterfat differential, less the amount of the payment made on or before the 26th day of the month.

For producer milk and milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, the order provides that the handler, in making a partial payment for the milk, shall pay the previous month's Class III price without adjustment for the butterfat content of the milk received.

Some proprietary handlers in the Texas market receive whole milk from a cooperative association in its capacity as a handler on farm bulk tank milk and on occasion from the same cooperative's pool plant as well. In making partial payments, these handlers have tended to pay the previous month's announced Class III price without adjustment for butterfat for both the bulk tank milk and the plant milk. In some instances, the butterfat content of the milk received from the cooperative's plant has been above 3.5 percent and, as a consequence, the handler's payment has been less than the value of such milk. Usually, the amount of the underpayment has been relatively insignificant. However, such underpayment violates the order's provisions and subjects the handler to a late payment charge on the amount of the underpayment.

It is not necessary for the orderly marketing of milk to require handlers to adjust the previous month's Class III price to reflect the butterfat content in making partial payments for bulk milk received from a cooperative's pool plant. The value of the milk, including any added value due to the butterfat content exceeding 3.5 percent, is reflected in the handler's final payment to the cooperative association. For that reason, handlers should be permitted to make partial payments at the previous month's Class III price without adjustment for butterfat for milk that is received from a cooperative's pool plant.

The order should provide, however, that the buying handler may adjust the Class III price to reflect the butterfat content if he desires to do so. This option will benefit handlers who receive skim milk from a cooperative's pool plant. In such situations, payment at the announced Class III price would result in a payment in excess of the classified use value of such milk.

At the time of final payment, the handler then would be due a credit from the cooperative association. This unnecessary additional transaction can be avoided by allowing a handler to adjust his partial payment to reflect the butterfat content of milk purchased from a cooperative's pool plant.

#### RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### GENERAL FINDINGS

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

#### RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the find-

ings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

#### MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Texas marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

#### DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

October 1978 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

(This decision constitutes the Department's Final Impact Analysis Statement for this proceeding.)

Signed at Washington, D.C., on: December 18, 1978.

P. R. "BOBBY" SMITH,  
Assistant Secretary for  
Marketing Services.

Order amending the order, regulating the handling of milk in the Texas marketing area.

#### FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed.

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Acting Deputy Administrator, Marketing Program Operations, on October 11, 1978, and published in the FEDERAL REGISTER on October 16, 1978 (43 FR 47534) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Section 1126.10(c) is revised as follows:

§ 1126.10 Producer-handler.

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month

from pool plants do not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds;

2. Section 1126.13(d) is revised as follows:

§ 1126.13 Producer milk.

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

3. Section 1126.73(g)(1) is revised as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(g) . . .

(1) On or before the 26th day of each month, an amount determined by multiplying such receipts during the first 18 days of the month by the Class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1126.74 for the preceding month; and

[FR Doc. 78-36132 Filed 12-27-78; 8:45 am]

[4410-10-M]

#### DEPARTMENT OF JUSTICE

##### Immigration and Naturalization Service

[8 CFR Part 231]

#### SUBMISSION OF AIRCRAFT-VESSEL REPORTS (FORMS I-92) FOR DIRECT FLIGHTS BETWEEN THE UNITED STATES AND CANADA

CROSS REFERENCE: For a document concerning proposed rules on the required submission of Forms I-92 (Aircraft/Vessel Reports) for passengers on direct flights between the United States and Canada, see FR Doc. 36177 in the "Rules and Regulations" section of this issue. Refer to the Table of Contents under Immigration and Naturalization Service for the correct page number.

[4910-13-M]

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-55]

#### TRANSITION AREA; PROPOSED ALTERATION

Kerrville, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Kerrville, Tex. The intended effect of the proposed action is to realign controlled airspace for aircraft executing instrument approach procedures to the Kerrville Municipal (Louis Schreiner Field) Airport. The circumstances which created the need for the action were relocation of the nondirectional radio beacon (NDB), commissioning of the Center Point VORTAC, and the proposed installation of a nonfederal localizer and outer marker to runway 30, with associated instrument approaches.

DATES: Comments on or before January 29, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: In Subpart G 71.181 (43 FR 440) of FAR Part 71, the description of the Kerrville, Tex., transition area reflects controlled airspace designated on the Kerrville NDB. Relocation of the NDB, commissioning of the Center Point VORTAC and installation of a nonfederal localizer and outer marker require realignment of instrument approach procedures and associated controlled airspace.

#### COMMENTS INVITED

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to



Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before January 29, 1979 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

#### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

#### THE PROPOSAL

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Kerrville, Tex., transition area. The FAA believes this action will properly align controlled airspace for aircraft executing instrument approach procedures established for the airport. Subpart G of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

#### THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) by altering the Kerrville, Tex., transition area as follows:

#### KERRVILLE, TEX.

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Kerrville Municipal (Louis Schreiner Field) Airport (latitude 29°58'38" N., longitude 99°05'13" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).

NOTE—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 3, 1978).

Issued in Fort Worth, Tex., on December 13, 1978.

PAUL J. BAKER,  
Acting Director,  
Southwest Region.

(FR Doc. 78-35940 Filed 12-27-78; 8:45 am)

[4910-13-M]

[14 CFR Part 71]

(Airspace Docket No. 78-EA-87)

#### VOR FEDERAL AIRWAYS

##### Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate an airway (V-373) from Gordonsville, Virginia, to IRONS intersection, south of Washington, D.C. via the SABBI intersection which is east of Brooke, Virginia. This action would designate as an airway a route that is presently used as an arrival vector route to the Washington area thereby reducing the coordination and communication time required for its use.

DATES: Comments must be received on or before January 29, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 78-EA-87, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket, (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

#### SUPPLEMENTARY INFORMATION:

##### COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before Jan. 29, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

#### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

#### THE PROPOSAL

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would add a new airway numbered V-373. This airway would replace the present arrival vector route from Gordonsville via the INT of Gordonsville 065°T (071°M) and Washington 189°T (196°M) radials to the INT of Washington 189°T (196°M) and Nottingham, Md. 238°T (245°M) radials. By designating this route as an airway it may be referred to by airway number rather than a lengthy description of intersections. This reduction in route definition would reduce the flight planning and communication time for both the pilot and the air traffic controller.

#### THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 307) as follows:

In § 71.123, "V-373 From Gordonsville, Va., via INT of Gordonsville 065° and Washington, D.C. 189° radials; to INT Washington 189° and Nottingham, Md., 238° radials." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 19, 1978.

WILLIAM E. BROADWATER,  
Chief, Airspace and Air  
Traffic Rules Division.

(FR Doc. 78-35938 Filed 12-27-78; 8:45 am)

[4910-13-M]

#### DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

(Airspace Docket No. 78-SO-73)

#### DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Proposed Designation of Transition Area,  
Cullowhee, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will designate the Cullowhee, North Carolina, Transition Area and will lower the base of controlled airspace within a 20-mile radius of the Jackson County Airport from 1200 to 700 feet AGL to accommodate Instrument Flight Rule (IFR) operations. A new public use instrument approach procedure has been developed for the Jackson County Airport, and the additional controlled airspace is required to protect aircraft conducting Instrument Flight Rule (IFR) operations.

DATES: Comments must be received on or before March 15, 1979.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT:

William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, At-

lanta, Georgia 30320; telephone: 404-763-7646.

#### SUPPLEMENTARY INFORMATION:

##### COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before March 15, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public, regulatory docket.

#### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

#### THE PROPOSAL

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Cullowhee, North Carolina, Transition Area. This action will provide controlled airspace protection for IFR operations at Jackson County Airport. An NDB standard instrument approach procedure utilizing the Cullowhee (nonfederal) non-directional radio beacon is proposed in conjunction with the designation of this transition area.

#### THE PROPOSED AMENDMENT

§ 71.181 [Amended]

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) by adding the following:

CULLOWHEE, NORTH CAROLINA

That airspace extending upward from 700 feet above the surface within a 20-mile radius of Jackson County Airport (Lat. 35°19'06" N., Long. 83°12'43" W.).

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1644(c)).

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in East Point, Georgia, on December 15, 1978.

PHILLIP M. SWATEK,  
Director, Southern Region.

(FR Doc. 78-36667 Filed 12-27-78; 8:45 am)

[4910-13-M]

[14 CFR Parts 71 and 73]

(Airspace Docket No. 78-SO-55)

#### TEMPORARY RESTRICTED AREAS

##### Proposed Establishment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate six temporary restricted areas in the vicinity of Camp Lejeune, N.C., to contain a major military exercise. These proposed actions will provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of non-participating aircraft within the joint use restricted airspace during the proposed time the areas are in use.

DATES: Comments must be received on or before January 29, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 78-SO-55; Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

Send comments concerning environmental and land use aspects to: Captain E. G. Smith, USN, CINCLANT N-37, Norfolk, Va. 23511 Telephone: (A/C 804) 444-6375.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Divisions.



# FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

## SUPPLEMENTARY INFORMATION:

### COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before January 29, 1979, will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

### AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

### THE PROPOSAL

The FAA is considering amendments to § 71.151 of Part 71 and Section 73.26 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to designate temporary restricted areas identified as R-5315A, R-5315B, R-5315C, R-5315D, R-5315E, and R-5315F in the vicinity of Camp Lejeune, N.C., to contain a major military joint readiness exercise. Those restricted areas that penetrate the Continental Control Area would also be included as controlled airspace for the duration of their designation. This exercise will provide training for several military commands operating under a single joint command. The designated ground maneuver areas are: Camp Lejeune, Croatan National Forest, Cherry Point and additional land

leased by the Corps of Engineers for this exercise. Supersonic flight and live ordnance will not be used in the temporary areas.

There will be an air superiority campaign, an amphibious operation employing helicopters and supporting fixed wing aircraft in the Onslow Bay area, helicopterborne airmobile assaults in the Camp Lejeune area, and supporting naval air operations from a carrier at sea and from NAS Oceana, Va. Land based aircraft will operate from Seymour Johnson, Shaw, Pope, Myrtle Beach AFBs and other candidate airfields.

It is estimated that the total number of exercise aircraft/sorties from all Services will be approximately 1,000. Exercise aircraft operating outside of the proposed restricted airspace and in positive control airspace, or in IFR conditions, will be on individual flight plans. Lines of communication will be installed with appropriate FAA facilities in order to coordinate movement of nonexercise air traffic through the exercise area when exercise activity permits. In addition, local business phone numbers (reverse charge) will be established and published for coordination of nonexercise air traffic.

Commander in Chief, Atlantic (CINCLANT) will serve as the lead agency for purposes of compliance with the National Environmental Policy Act. The proposed restricted areas would be designated as joint use and IFR/VFR operations in the areas may be authorized/permitted by the controlling agency when the areas are not in use by the using agency. The controlling agency for the proposed restricted areas would be the FAA, Washington ARTC Center.

### THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (43 FR 344, 697) as follows:

#### § 71.151 [Amended]

In § 71.151 (43 FR 344), the following temporary restricted areas are added for the duration of their time of designation from 0001, May 12, 1979, to 0001, local time, May 22, 1979:

R-5315A Lejeune, N.C.  
R-5315C Lejeune, N.C.  
R-5315D Lejeune, N.C.

#### § 73.53 [Amended]

In § 73.53 (43 FR 697), the following temporary restricted areas are added:

R-5315A Lejeune, N.C.

Boundaries. Beginning at Lat. 34°15'00"N., Long. 77°30'00"W.; to Lat. 34°57'00"N., Long. 77°02'45"W.; to Lat. 34°49'30"N., Long. 77°10'00"W.; to Lat. 34°44'50"N.,

Long. 77°14'40"W.; to Lat. 34°39'10"N., Long. 77°20'50"W.; to Lat. 34°40'20"N., Long. 77°22'12"W.; to Lat. 34°38'12"N., Long. 77°26'00"W.; to Lat. 34°36'05"N., Long. 77°26'08"W.; to Lat. 34°33'00"N., Long. 77°19'00"W.; to Lat. 34°30'20"N., Long. 77°15'50"W.; thence southwest 3 NM from and parallel to the shoreline to Lat. 34°23'00"N., Long. 77°30'00"W.; to Lat. 34°20'00"N., Long. 77°30'00"W.; to Lat. 34°26'30"N., Long. 77°40'00"W.; to Lat. 34°42'30"N., Long. 77°23'00"W.; to Lat. 34°55'00"N., Long. 77°35'30"W.; thence to point of beginning.

Designated altitudes. Surface to but not including FL 180.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5315B Lejeune, N.C.

Boundaries. Beginning at Lat. 34°51'00"N., Long. 77°05'30"W.; to Lat. 34°42'00"N., Long. 77°54'45"W.; to Lat. 34°41'50"N., Long. 76°56'20"W.; to Lat. 34°37'30"N., Long. 76°56'20"W.; thence southwest 3 NM from and parallel to the shoreline to Lat. 34°34'30"N., Long. 77°09'00"W.; to Lat. 34°44'50"N., Long. 77°14'40"W.; to Lat. 34°49'30"N., Long. 77°10'00"W.; thence to point of beginning.

Designated altitudes. Surface to but not including 1,200 feet MSL.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5315C Lejeune, N.C.

Boundaries. Beginning at Lat. 34°57'00"N., Long. 77°02'45"W.; to Lat. 34°38'30"N., Long. 76°43'00"W.; thence west 3 NM from and parallel to the shoreline to Lat. 34°37'30"N., Long. 76°56'20"W.; to Lat. 34°41'50"N., Long. 76°56'20"W.; to Lat. 34°42'00"N., Long. 76°54'45"W.; to Lat. 34°51'00"N., Long. 77°05'30"W.; to Lat. 34°49'30"N., Long. 77°10'00"W.; thence to point of beginning.

Designated altitudes. 4,000 feet MSL to but not including FL 180.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5315D Lejeune, N.C.

Boundaries. Beginning at Lat. 35°15'00"N., Long. 77°30'00"W.; to Lat. 35°43'50"N., Long. 76°35'30"W.; to Lat. 35°38'55"N., Long. 76°01'00"W.; to Lat. 35°36'45"N., Long. 76°01'20"W.; to Lat. 35°18'15"N., Long. 76°16'40"W.; to Lat. 35°23'15"N., Long. 76°34'40"W.; to Lat. 35°08'00"N., Long. 76°51'20"W.; to Lat. 35°03'00"N., Long. 76°57'00"W.; to Lat. 34°57'00"N., Long. 77°02'45"W.; thence to point of beginning.

Designated altitudes. 10,000 feet MSL to but not including FL 180.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.  
R-5315E Lejeune, N.C.

Boundaries. Beginning at Lat. 35°54'50"N., Long. 76°31'10"W.; to Lat. 35°51'25"N., Long. 76°10'25"W.; to Lat. 35°40'25"N., Long. 76°12'25"W.; to Lat. 35°43'50"N., Long. 76°35'30"W.; thence to point of beginning.

Designated altitudes. 6,000 feet MSL to and including 14,000 feet MSL.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5315F Lejeune, N.C.

Boundaries. Beginning at Lat. 35°51'25"N., Long. 76°10'05"W.; to Lat. 35°50'20"N., Long. 76°02'30"W.; to Lat. 35°39'20"N., Long. 76°06'00"W.; to Lat. 35°40'25"N., Long. 76°12'25"W.; thence to point of beginning.

Designated altitudes. 10,000 feet MSL to and including 14,000 feet MSL.

Time of designation. Intermittent, 0001, May 12, 1979, to 0001, local time, May 22, 1979.

Controlling agency. Federal Aviation Administration, Washington ARTCC.

Using agency. United States Atlantic Command, Norfolk, Va.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by Interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 21, 1978.

WILLIAM E. BROADWATER,  
Chief, Airspace and Air  
Traffic Rules Division.  
[FR Doc. 78-36069 Filed 12-27-78; 8:45 am]

[4210-01-M]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 888]

[Docket No. R-78-588]

## FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

McAlester, Okla., Market Area

AGENCY: Office of Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the schedule of Fair Market Rents for the McAlester, Oklahoma market area. As required by statute, the Secretary is revising, based on recent data, fair market rents for Section 8 low and moderate income housing in selected geographical areas.

DATES: Interested parties are invited to submit written comments, data suggestions, or objections by January 11, 1979.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, 202-755-7603. This is not a toll-free number.

## FOR FURTHER INFORMATION CONTACT:

Henry F. P. Cassagne, Chief Appraiser, Office of Technical Support, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-472-4810. This is not a toll-free number.

## SUPPLEMENTARY INFORMATION:

Recent data and comments have been received from the Oklahoma City Area Office indicating an immediate need to establish Fair Market Rents for Mobile Homes in the McAlester, Oklahoma market area. It has been determined that it is impracticable and unnecessary to provide a 30-day period for comments on these proposed revisions and that a 15-day period is reasonable and in the public interest.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

Accordingly, the Secretary proposes to incorporate in Part 888, Subpart A, a Revised Schedule A for the McAlester, Oklahoma market area as set forth below.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

In accordance with Section 7(o) (4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., on October 26, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing—Federal Housing Commissioner.

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE.—The Fair Market Rents for (1) Dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.



[4210-01-C]

AREA

OFFICE OKLAHOMA CITY

REGION VI - DALLAS

| MARKET AREA | STRUCTURE TYPE              | NUMBER OF BEDROOMS |     |     |     |           |
|-------------|-----------------------------|--------------------|-----|-----|-----|-----------|
|             |                             | 0                  | 1   | 2   | 3   | 4 or more |
| MCALESTER   | MOBILE HOME                 | 179                | 243 | 305 | 330 |           |
|             | DETACHED                    |                    |     |     |     |           |
|             | SEMI-DETACHED/ROW           |                    |     |     |     |           |
|             | WALKUP                      |                    |     |     |     |           |
|             | ELEVATOR-2-4 Sty<br>5 + Sty |                    |     |     |     |           |
|             | DETACHED                    |                    |     |     |     |           |
|             | SEMI-DETACHED/ROW           |                    |     |     |     |           |
|             | WALKUP                      |                    |     |     |     |           |
|             | ELEVATOR-2-4 Sty<br>5 + Sty |                    |     |     |     |           |
|             | DETACHED                    |                    |     |     |     |           |
|             | SEMI-DETACHED/ROW           |                    |     |     |     |           |
|             | WALKUP                      |                    |     |     |     |           |
|             | ELEVATOR-2-4 Sty<br>5 + Sty |                    |     |     |     |           |
|             | DETACHED                    |                    |     |     |     |           |
|             | SEMI-DETACHED/ROW           |                    |     |     |     |           |
|             | WALKUP                      |                    |     |     |     |           |
|             | ELEVATOR-2-4 Sty<br>5 + Sty |                    |     |     |     |           |

[FR Doc. 78-36011 Filed 12-27-78; 8:45 am]

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

[4210-01-M]

[24 CFR Part 888]

[Docket No. R-78-589]

FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Ada, Ardmore, Enid, Guymon, Lawton, Oklahoma City, Shawnee, Stillwater, and Woodward, Okla.; and Santa Ana, and San Bernardino, Calif., Market Areas

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the schedules of Fair Market Rents for the Ada, Ardmore, Enid, Guymon, Lawton, Oklahoma City, Shawnee, Stillwater, and Woodward, Oklahoma, and the Santa Ana and San Bernardino, California market areas. As required by statute, the Secretary is revising, based on recent data, fair market rents for Section 8 low and moderate income housing in selected geographical areas.

DATES: Interested parties are invited to submit written comments, data suggestions, or objections by January 12, 1979.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S. W., Washington, D. C. 20410, 202-755-7603. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT:

Henry P. P. Cassagne, Chief Appraiser, Office of Technical Support, Department of Housing and Urban Development, 451 7th Street, S. W., Washington, D. C. 20410, 202-472-4810. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Recent data and comments have been received from the Los Angeles and Oklahoma City Area Offices indicating an immediate need to amend the Fair Market Rents for the following market areas:

Santa Ana and San Bernardino, California  
Ada, Ardmore, Enid, Guymon, Lawton, Oklahoma City, Shawnee, Stillwater, and Woodward, Oklahoma.

It has been determined that it is impracticable and unnecessary to provide a 30-day period for comments on these proposed revisions and that a 15-day period is reasonable and in the public interest.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

It is therefore proposed that Schedule A of Part 888 be amended as set forth below.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d).)

In accordance with Section 7(c)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D. C. on October 26, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing—Federal Housing Commissioner

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedroom multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-bedroom units of the same type.



[4210-01-C]

AREA/INSURING OFFICE Oklahoma City, Oklahoma REGION VI Dallas

| MARKET AREA               | STRUCTURE TYPE    | NUMBER OF BEDROOMS |     |     |     |           |
|---------------------------|-------------------|--------------------|-----|-----|-----|-----------|
|                           |                   | 0                  | 1   | 2   | 3   | 4 or more |
| OKLAHOMA<br>CITY<br>OKLA. | DETACHED          |                    |     | 307 | 386 | 452       |
|                           | SEMI-DETACHED/ROW | 218                | 252 | 284 | 350 | 404       |
|                           | WALKUP            | 195                | 225 | 254 | 313 | 361       |
|                           | ELEVATOR-2-4 Sty  | 219                | 249 | 278 |     |           |
|                           | 5 + Sty           | 329                | 353 | 400 |     |           |
| ADA,<br>OKLA.             | DETACHED          |                    |     | 362 | 414 | 468       |
|                           | SEMI-DETACHED/ROW | 213                | 251 | 335 | 382 | 451       |
|                           | WALKUP            | 190                | 224 | 299 | 341 | 403       |
|                           | ELEVATOR-2-4 Sty  | 214                | 248 | 323 |     |           |
|                           | 5 + Sty           | 286                | 339 | 424 |     |           |
| ARDMORE,<br>OKLA          | DETACHED          |                    |     | 322 | 397 | 453       |
|                           | SEMI-DETACHED/ROW | 214                | 246 | 305 | 375 | 414       |
|                           | WALKUP            | 191                | 220 | 272 | 335 | 370       |
|                           | ELEVATOR-2-4 Sty  | 215                | 244 | 296 |     |           |
|                           | 5 + Sty           | 311                | 334 | 414 |     |           |
| ENID,<br>OKLA.            | DETACHED          |                    |     | 395 | 457 | 532       |
|                           | SEMI-DETACHED/ROW | 256                | 277 | 348 | 400 | 454       |
|                           | WALKUP            | 229                | 247 | 311 | 358 | 405       |
|                           | ELEVATOR-2-4 Sty  | 253                | 271 | 335 |     |           |
|                           | 5 + Sty           | 370                | 401 | 511 |     |           |
| GUYMON,<br>OKLA.          | DETACHED          |                    |     | 351 | 426 | 493       |
|                           | SEMI-DETACHED/ROW | 192                | 225 | 324 | 393 | 440       |
|                           | WALKUP            | 171                | 201 | 289 | 351 | 393       |
|                           | ELEVATOR-2-4 Sty  | 195                | 225 | 313 |     |           |
|                           | 5 + Sty           | 284                | 315 | 450 |     |           |
| LAWTON,<br>OKLA.          | DETACHED          |                    |     | 318 | 434 | 493       |
|                           | SEMI-DETACHED/ROW | 206                | 271 | 296 | 399 | 440       |
|                           | WALKUP            | 184                | 242 | 264 | 356 | 393       |
|                           | ELEVATOR-2-4 Sty  | 208                | 266 | 288 |     |           |
|                           | 5 + Sty           | 301                | 366 | 401 |     |           |

AREA/INSURING OFFICE OKLAHOMA CITY, OKLAHOMA REGION VI DALLAS

| MARKET AREA          | STRUCTURE TYPE    | NUMBER OF BEDROOMS |     |     |     |           |
|----------------------|-------------------|--------------------|-----|-----|-----|-----------|
|                      |                   | 0                  | 1   | 2   | 3   | 4 or more |
| SHAWNEE,<br>OKLA.    | DETACHED          |                    |     | 322 | 381 | 429       |
|                      | SEMI-DETACHED/ROW | 199                | 239 | 298 | 352 | 384       |
|                      | WALKUP            | 178                | 213 | 266 | 314 | 343       |
|                      | ELEVATOR-2-4 Sty  | 202                | 237 | 290 |     |           |
|                      | 5 + Sty           | 293                | 323 | 406 |     |           |
| STILLWATER,<br>OKLA. | DETACHED          |                    |     | 313 | 404 | 474       |
|                      | SEMI-DETACHED/ROW | 218                | 244 | 289 | 373 | 424       |
|                      | WALKUP            | 195                | 218 | 258 | 333 | 379       |
|                      | ELEVATOR-2-4 Sty  | 219                | 242 | 282 |     |           |
|                      | 5 + Sty           | 294                | 330 | 394 |     |           |
| WOODWARD,<br>OKLA.   | DETACHED          |                    |     | 317 | 397 | 470       |
|                      | SEMI-DETACHED/ROW | 206                | 246 | 293 | 366 | 420       |
|                      | WALKUP            | 184                | 220 | 262 | 327 | 375       |
|                      | ELEVATOR-2-4 Sty  | 208                | 244 | 286 |     |           |
|                      | 5 + Sty           | 309                | 340 | 410 |     |           |
|                      | DETACHED          |                    |     |     |     |           |
|                      | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                      | WALKUP            |                    |     |     |     |           |
|                      | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                      | 5 + Sty           |                    |     |     |     |           |
|                      | DETACHED          |                    |     |     |     |           |
|                      | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                      | WALKUP            |                    |     |     |     |           |
|                      | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                      | 5 + Sty           |                    |     |     |     |           |
|                      | DETACHED          |                    |     |     |     |           |
|                      | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                      | WALKUP            |                    |     |     |     |           |
|                      | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                      | 5 + Sty           |                    |     |     |     |           |



AREA/INSURING OFFICE LOS ANGELES, CA REGION IX - San Francisco

| MARKET AREA                  | STRUCTURE TYPE    | NUMBER OF BEDROOMS |     |     |     |           |
|------------------------------|-------------------|--------------------|-----|-----|-----|-----------|
|                              |                   | 0                  | 1   | 2   | 3   | 4 or more |
| SANTA ANA,<br>CALIF.         | DETACHED          |                    |     | 472 | 530 | 570       |
|                              | SEMI-DETACHED/ROW |                    | 369 | 450 | 502 | 543       |
|                              | WALKUP            | 295                | 351 | 417 | 461 | 495       |
|                              | ELEVATOR-2-4 Sty  | 310                | 367 | 435 |     |           |
|                              | 5 + Sty           | 424                | 491 | 592 |     |           |
| SAN<br>BERNARDINO,<br>CALIF. | DETACHED          |                    |     | 460 | 512 | 568       |
|                              | SEMI-DETACHED/ROW |                    | 348 | 425 | 471 | 535       |
|                              | WALKUP            | 262                | 316 | 377 | 409 | 454       |
|                              | ELEVATOR-2-4 Sty  | 280                | 336 | 399 |     |           |
|                              | 5 + Sty           | 387                | 448 | 544 |     |           |
|                              | DETACHED          |                    |     |     |     |           |
|                              | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                              | WALKUP            |                    |     |     |     |           |
|                              | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                              | 5 + Sty           |                    |     |     |     |           |
|                              | DETACHED          |                    |     |     |     |           |
|                              | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                              | WALKUP            |                    |     |     |     |           |
|                              | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                              | 5 + Sty           |                    |     |     |     |           |
|                              | DETACHED          |                    |     |     |     |           |
|                              | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                              | WALKUP            |                    |     |     |     |           |
|                              | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                              | 5 + Sty           |                    |     |     |     |           |
|                              | DETACHED          |                    |     |     |     |           |
|                              | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                              | WALKUP            |                    |     |     |     |           |
|                              | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                              | 5 + Sty           |                    |     |     |     |           |
|                              | DETACHED          |                    |     |     |     |           |
|                              | SEMI-DETACHED/ROW |                    |     |     |     |           |
|                              | WALKUP            |                    |     |     |     |           |
|                              | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|                              | 5 + Sty           |                    |     |     |     |           |

[FR Doc. 78-36019 Filed 12-27-78; 8:45 am]

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

[4210-01-M]

[24 CFR Part 888]

[Docket No. R-78-590]

**FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION**

Fort Worth, Abilene, San Angelo, and Wichita Falls, Texas Market Areas

**AGENCY:** Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the schedules of Fair Market Rents for the Fort Worth, Abilene, San Angelo, and Wichita Falls, Texas market areas. As required by statute, the Secretary is revising, based on recent data, fair market rents for Section 8 low and moderate income housing in selected geographical areas.

**DATES:** Interested parties are invited to submit written comments, data suggestions, or objections by January 12, 1979.

**ADDRESS:** Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-7603. This is not a toll-free number.

**FOR FURTHER INFORMATION CONTACT:**

Henry F. P. Cassagne, Chief Appraiser, Office of Technical Support, Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. 20410, 202-472-4810. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

Recent data and comments have been received from the Fort Worth Service Office Area indicating an immediate need to amend the Fair Market Rents for the Fort Worth, Abilene, San Angelo, and Wichita Falls, Texas market areas. It has been determined that it is impracticable and unnecessary to provide a 30-day period for comments on these proposed revisions and that a 15-day period is reasonable and in the public interest.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

Accordingly, the Secretary proposes to incorporate in Part 888, Subpart A, Revised Schedules A for the Fort Worth, Abilene, San Angelo, and Wichita Falls, Texas market areas as set forth below.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d).)

AREA OFFICE DALLAS, TEXAS REGION VI - DALLAS

| MARKET AREA   | STRUCTURE TYPE    | NUMBER OF BEDROOMS |     |     |     |           |
|---------------|-------------------|--------------------|-----|-----|-----|-----------|
|               |                   | 0                  | 1   | 2   | 3   | 4 or more |
| Fort Worth    | DETACHED          |                    |     | 377 | 490 | 537       |
|               | SEMI-DETACHED/ROW |                    | 260 | 328 | 386 | 451       |
|               | WALKUP            | 154                | 238 | 305 | 360 | 419       |
|               | ELEVATOR-2-4 Sty  | 214                | 268 | 338 |     |           |
|               | 5 + Sty           | 300                | 360 | 478 |     |           |
| Abilene       | DETACHED          |                    |     | 377 | 490 | 537       |
|               | SEMI-DETACHED/ROW |                    | 260 | 328 | 386 | 451       |
|               | WALKUP            | 194                | 227 | 305 | 360 | 419       |
|               | ELEVATOR-2-4 Sty  | 214                | 268 | 338 |     |           |
|               | 5 + Sty           | 300                | 360 | 478 |     |           |
| San Angelo    | DETACHED          |                    |     | 348 | 493 | 497       |
|               | SEMI-DETACHED/ROW |                    | 241 | 303 | 357 | 417       |
|               | WALKUP            | 179                | 219 | 282 | 333 | 388       |
|               | ELEVATOR-2-4 Sty  | 197                | 247 | 312 |     |           |
|               | 5 + Sty           | 277                | 333 | 442 |     |           |
| Wichita Falls | DETACHED          |                    |     | 348 | 493 | 497       |
|               | SEMI-DETACHED/ROW |                    | 241 | 303 | 357 | 417       |
|               | WALKUP            | 179                | 221 | 282 | 333 | 388       |
|               | ELEVATOR-2-4 Sty  | 197                | 246 | 312 |     |           |
|               | 5 + Sty           | 277                | 333 | 442 |     |           |
|               | DETACHED          |                    |     |     |     |           |
|               | SEMI-DETACHED/ROW |                    |     |     |     |           |
|               | WALKUP            |                    |     |     |     |           |
|               | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|               | 5 + Sty           |                    |     |     |     |           |
|               | DETACHED          |                    |     |     |     |           |
|               | SEMI-DETACHED/ROW |                    |     |     |     |           |
|               | WALKUP            |                    |     |     |     |           |
|               | ELEVATOR-2-4 Sty  |                    |     |     |     |           |
|               | 5 + Sty           |                    |     |     |     |           |

[FR Doc. 78-36039 Filed 12-27-78; 8:45 am]

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C. on October 26, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing,  
Federal Housing Commission-  
er.

**SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)**

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

**NOTE.**—The Fair Market Rents for (1) Dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

Office of Assistant Secretary for Housing,  
Federal Housing Commissioner

[24 CFR Parts 803 and 888]

[Docket R-78-5011]

SECTION 23 AND SECTION 8 HOUSING AS-  
SISTANCE PAYMENTS PROGRAM—FAIR  
MARKET RENTS AND CONTRACT RENT  
AUTOMATIC ANNUAL ADJUSTMENT FAC-  
TORS

Amendment of Schedule B—Section 8 Existing  
Housing and Section 23 Existing Housing

AGENCY: Department of Housing  
and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: The Department is pro-  
posing to amend the schedules that set  
forth Fair Market Rents under the  
"Section 23" and "Section 8" Housing  
Assistance Payments Programs for Ex-  
isting Housing. On the basis of current  
data submitted by the public, Public  
Housing Authorities (PHA's), and by  
HUD field offices, revised rents are  
now being proposed for selected areas  
to reflect changes in local housing  
market conditions. The intent of these  
changes is to update the Fair Market  
Rents for the affected areas for var-  
ious sizes of units in elevator and non-  
elevator buildings.

DATE: Comments due January 12,  
1979.

ADDRESSES: Interested persons are  
invited to participate by submitting  
comments or suggestions on the pro-  
posed rents to the Rules Docket Clerk,  
Office of the General Counsel, Room  
5218, Department of Housing and

Urban Development, 451 7th Street  
SW., Washington, D.C. 20410, and di-  
rectly to the appropriate HUD field  
offices. Communications should identi-  
fy the subject matter by the above  
title, docket number, and date of pub-  
lication. All relevant material received  
on or before the date specified above  
will be considered by HUD before  
adoption of revised Fair Market Rents.  
A copy of each comment will be availa-  
ble for public inspection at this ad-  
dress during regular business hours.

FOR FURTHER INFORMATION  
CONTACT:

Nancy S. Chisholm, Acting Director,  
Economic Market Analysis Division,  
PD&R, HUD, Washington, D.C.  
20410 202-755-5870. This is not a toll  
free number.

SUPPLEMENTARY INFORMATION:  
The last nationwide revision of Fair

Market Rents, required on at least an  
annual basis by law, was published in  
the FEDERAL REGISTER on March 29,  
1978 (42 FR 13181). On the basis of  
current data submitted by the public,  
PHA's, and by HUD field offices, re-  
vised rents are now being proposed for  
selected areas to reflect changes in  
local housing market conditions. The  
intent of these changes is to update  
the Fair Market Rents for the affect-  
ed areas for various sizes of units in  
elevator and non-elevator buildings.

By nature, Fair Market Rent sched-  
ules are subject to periodic revisions  
where data and information indicate  
change is needed. Accordingly, Sched-  
ule B Fair Market Rents will continue  
to be amended in the future for those  
local housing market areas where  
changes are determined appropriate  
on the basis of available data and in-  
formation.

Because it is necessary to the oper-  
ation of the Section 8 and Section 23  
programs that Fair Market Rents  
remain as current as possible, and be-  
cause interested parties are encour-  
aged at all times to submit informa-  
tion and data on those rents which  
will be considered in initiating revi-  
sions as needed, it has been deter-  
mined that it is impracticable and un-  
necessary to provide a 30-day period of  
comments on the these proposed revi-  
sions and that a 15-day period is rea-  
sonable and in the public interest.

The Department has determined  
that these regulations do not consti-  
tute a major Federal action signifi-  
cantly affecting the quality of human  
environment. Accordingly, a finding of  
inapplicability of environment impact  
has been prepared and is available for  
public inspection during regular busi-  
ness hours at the office of the Rules  
Docket Clerk, at the address specified  
above.

It is therefore proposed that Title  
24, Part 888, Schedule B and Part 803,  
Schedule B be revised as set forth  
below.

This notice of proposed rulemaking  
is issued under the authority of sec.  
7(d), Department of HUD Act (42  
U.S.C. 3535(d)).

In accordance with Section 7(o)(4) of  
the Department of HUD Act, Section  
324 of the Housing and Community  
Development Amendments of 1978,  
Pub. L. 95-557, 92 Stat. 2080, this pro-  
posed rule has been granted waiver of  
Congressional review requirements in  
order to permit publication at this  
time for public comment.

Issued in Washington, D.C., Novem-  
ber 21, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing,  
Federal Housing Commission-  
er.

[4210-01-C]

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION                           | 2         | 0 BEDROOMS       |  |  |  | 1 BEDROOM        |  |  |  | 2 BEDROOMS       |  |  |  | 3 BEDROOMS       |  |  |  | 4 BEDROOMS       |  |  |  |
|----------------------------------|-----------|------------------|--|--|--|------------------|--|--|--|------------------|--|--|--|------------------|--|--|--|------------------|--|--|--|
|                                  |           | NON-SMSA         |  |  |  | COUNTY:JEFFERSON |  |  |  | COUNTY:LEWIS     |  |  |  | COUNTY:JEFFERSON |  |  |  | COUNTY:LEWIS     |  |  |  |
| ALBANY, NEW YORK INSURING OFFICE | NON SMSA  | COUNTY:JEFFERSON |  |  |  | COUNTY:LEWIS     |  |  |  | COUNTY:JEFFERSON |  |  |  | COUNTY:LEWIS     |  |  |  | COUNTY:JEFFERSON |  |  |  |
|                                  |           | STATE:NY         |  |  |  | STATE:NY         |  |  |  | STATE:NY         |  |  |  | STATE:NY         |  |  |  | STATE:NY         |  |  |  |
| NON-ELEVATOR:                    | ELEVATOR: | 135              |  |  |  | 156              |  |  |  | 186              |  |  |  | 201              |  |  |  | 222              |  |  |  |
|                                  |           | 149              |  |  |  | 172              |  |  |  | 205              |  |  |  | 231              |  |  |  | 244              |  |  |  |
| NON-ELEVATOR:                    | ELEVATOR: | 129              |  |  |  | 152              |  |  |  | 174              |  |  |  | 183              |  |  |  | 212              |  |  |  |
|                                  |           | 142              |  |  |  | 167              |  |  |  | 191              |  |  |  | 212              |  |  |  | 233              |  |  |  |

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - ENAD (CO), SEPTEMBER 07, 1978



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 3                                  | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4 BEDROOMS |
|-------------------------------------------|------------|-----------|------------|------------|------------|
| CHARLESTON, WEST VIRGINIA INSURING OFFICE |            |           |            |            |            |
| SMSA: WHEELING, WV-OH                     |            | 162       | 196        | 231        | 253        |
| COUNTY: MARSHALL                          | 141        | 178       | 216        | 252        | 277        |
| STATE: WV                                 | 155        |           |            |            |            |
| NON-ELEVATOR:                             |            |           |            |            |            |
| ELEVATOR:                                 |            |           |            |            |            |
| COUNTY: OHIO                              | 141        | 162       | 196        | 231        | 253        |
| STATE: WV                                 | 155        | 178       | 216        | 252        | 277        |
| NON-ELEVATOR:                             |            |           |            |            |            |
| ELEVATOR:                                 |            |           |            |            |            |

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL 43, NO. 250—THURSDAY, DECEMBER 20, 1978

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 3                                | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4 BEDROOMS |
|-----------------------------------------|------------|-----------|------------|------------|------------|
| PHILADELPHIA, PENNSYLVANIA AREA OFFICE: |            |           |            |            |            |
| SMSA: LANCASTER, PA                     |            | 178       | 228        | 272        | 301        |
| COUNTY: LANCASTER                       | 142        | 198       | 251        | 299        | 331        |
| STATE: PA                               | 156        |           |            |            |            |
| NON-ELEVATOR:                           |            |           |            |            |            |
| ELEVATOR:                               |            |           |            |            |            |
| NON SMSA                                |            |           |            |            |            |
| COUNTY: BRADFORD                        | 168        | 174       | 203        | 240        | 258        |
| STATE: PA                               | 185        | 181       | 223        | 264        | 284        |
| NON-ELEVATOR:                           |            |           |            |            |            |
| ELEVATOR:                               |            |           |            |            |            |
| COUNTY: SNYDER                          | 155        | 174       | 190        | 220        | 250        |
| STATE: PA                               | 171        | 191       | 209        | 242        | 275        |
| NON-ELEVATOR:                           |            |           |            |            |            |
| ELEVATOR:                               |            |           |            |            |            |
| COUNTY: TIOGA                           | 168        | 174       | 203        | 240        | 258        |
| STATE: PA                               | 185        | 191       | 223        | 264        | 284        |
| NON-ELEVATOR:                           |            |           |            |            |            |
| ELEVATOR:                               |            |           |            |            |            |
| COUNTY: UNION                           | 155        | 174       | 190        | 220        | 250        |
| STATE: PA                               | 171        | 191       | 209        | 242        | 275        |
| NON-ELEVATOR:                           |            |           |            |            |            |
| ELEVATOR:                               |            |           |            |            |            |

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL 43, NO. 250—THURSDAY, DECEMBER 20, 1978



SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)  
REGION 5 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

CLEVELAND, OHIO INSURING OFFICE  
SMSA: LIMA, OH  
COUNTY: PUTNAM  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 152 | 175 | 211 | 243 | 268 |
| ELEVATOR:     | 166 | 190 | 229 | 268 | 294 |

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION B & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)  
REGION 5 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

COLUMBUS, OHIO AREA OFFICE  
SMSA: LIMA, OH  
COUNTY: ALLEN  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 152 | 175 | 211 | 243 | 268 |
| ELEVATOR:     | 166 | 190 | 229 | 268 | 294 |

COUNTY: AUGLAIZE  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 152 | 175 | 211 | 243 | 268 |
| ELEVATOR:     | 166 | 190 | 229 | 268 | 294 |

COUNTY: VAN WERT  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 152 | 175 | 211 | 243 | 268 |
| ELEVATOR:     | 166 | 190 | 229 | 268 | 294 |

SMSA: WHEELING, WV-OH  
COUNTY: BELMONT  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 141 | 162 | 198 | 251 | 253 |
| ELEVATOR:     | 155 | 178 | 216 | 252 | 277 |

NON SMSA  
COUNTY: SHELBY  
STATE: OH

|               |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|
| NON-ELEVATOR: | 146 | 170 | 205 | 240 | 262 |
| ELEVATOR:     | 162 | 186 | 228 | 262 | 290 |

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)  
REGION 5

SPRINGFIELD, ILLINOIS INSURING OFFICE

NON SMSA  
COUNTY: JACKSON  
STATE: IL

NON-ELEVATOR:  
ELEVATOR:

126  
139

176  
194

266  
293

271  
298

344  
378

0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 7

DES MOINES, IOWA INSURING OFFICE

NON SMSA  
COUNTY: WAPELLO  
STATE: IA

NON-ELEVATOR:  
ELEVATOR:

118  
128

176  
194

221  
243

243  
267

267  
284

0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 7 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

TOPEKA, KANSAS INSURING OFFICE

NON SMSA

COUNTY: SALINE

STATE: KS

NON-ELEVATOR:  
ELEVATOR:

126  
139

149  
164

184  
201

204  
223

219  
240

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

FARGO, NORTH DAKOTA INSURING OFFICE

NON SMSA

COUNTY: MORTON

STATE: ND

NON-ELEVATOR:  
ELEVATOR:

118  
128

135  
150

225  
247

249  
274

276  
304

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

SALT LAKE CITY,UTAH INSURING OFFICE

NON SMSA

COUNTY:EMERY  
STATE:UT

NON-ELEVATOR:  
ELEVATOR:

172 191 212 234 257  
180 210 233 257 283

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8 0 BEDROOMS 1 BEDROOM 2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

SIOUX FALLS,SOUTH DAKOTA INSURING OFFICE

SMSA: SIOUX FALLS, SD  
COUNTY:MINNEHAHA  
STATE:SD

NON-ELEVATOR:  
ELEVATOR:

157 192 227 257 274  
173 211 250 283 301

NON SMSA  
COUNTY:CLAY  
STATE:SD

NON-ELEVATOR:  
ELEVATOR:

123 141 204 226 250  
135 155 224 253 275

COUNTY:CODINGTON  
STATE:SD

NON-ELEVATOR:  
ELEVATOR:

125 144 174 194 214  
138 157 191 213 234

COUNTY:WALWORTH  
STATE:SD

NON-ELEVATOR:  
ELEVATOR:

124 145 185 204 228  
136 160 204 224 251

COUNTY:YANKTON  
STATE:SD

NON-ELEVATOR:  
ELEVATOR:

127 147 162 180 200  
140 162 178 198 220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:  
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). SEPTEMBER 07, 1978

BERS  
FURPUR 27A2 5L73R1 09/19/78 04:57:14  
END ERS.

(FR Doc. 78-38047 Filed 12-27-78; 8:45 am)

FEDERAL REGISTER, VOL. 43, NO. 250—THURSDAY, DECEMBER 28, 1978



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

(Docket No. FI-4387)

VILLAGE OF HALES CORNERS, MILWAUKEE  
COUNTY, WIS.Proposed Flood Elevation Determinations;  
CorrectionAGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a  
proposed rule on base (100-year) flood  
elevations that appeared on page 43  
FR 36485 of the FEDERAL REGISTER of  
August 17, 1978.

EFFECTIVE DATE: August 17, 1978.

FOR FURTHER INFORMATION  
CONTACT:Mr. Richard Krimm, Assistant Ad-  
ministrator, Office of Flood Insur-  
ance, Room 5270, 451 Seventh  
Street, SW., Washington, D.C. 20410  
(202) 755-5581 or Toll Free Line 800-  
424-8872.The Source of Flooding shown as  
Wemp Branch should be corrected to  
read:

| Source of flooding | Location                                  | Elevation<br>in feet,<br>national<br>geodetic<br>vertical<br>datum |
|--------------------|-------------------------------------------|--------------------------------------------------------------------|
| Wemp Branch .....  | Confluence with Root<br>River Tributary.  | 769                                                                |
|                    | Just Upstream of West<br>Janesville Road. | 774                                                                |
|                    | Just Upstream of West<br>Parnell Avenue.  | 784                                                                |
|                    | Just Upstream of South<br>115th Street.   | 789                                                                |
|                    | At West Corporate<br>Limits.              | 814                                                                |

(National Flood Insurance Act of 1968 (Title  
XIII of Housing and Urban Development  
Act of 1968), effective January 28, 1969 (33  
FR 17804, November 28, 1968), as amended;  
42 U.S.C. 4001-4128; and the Secretary's de-  
legation of authority to Federal Insurance  
Administrator 43 FR 7719.)In accordance with Section 7(o)(4) of the  
Department of HUD Act, Section 324 of the  
Housing and Community Development  
Amendments of 1978, P.L. 95-557, 92 Stat.  
2080, this proposed rule has been granted  
waiver of Congressional review require-  
ments in order to permit publication at this  
time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-36005 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-4407)

CITY OF JACKSONVILLE, MORGAN COUNTY,  
ILL.Proposed Flood Elevation Determinations;  
CorrectionAGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a  
proposed rule on base (100-year) flood  
elevations that appeared on page 43  
FR 38426 of the FEDERAL REGISTER of  
August 28, 1978.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION  
CONTACT:Mr. Richard Krimm, Assistant Ad-  
ministrator, Office of Flood Insur-  
ance, Room 5270, 451 Seventh Street  
SW., Washington, D.C. 20410, 202-  
755-5581 or toll-free line 800-424-  
8872.

The following location:

| Source of flooding     | Location                                    | Elevation<br>in feet,<br>national<br>geodetic<br>vertical<br>datum |
|------------------------|---------------------------------------------|--------------------------------------------------------------------|
| Mauvaisterre<br>Creek. | 50 ft upstream of<br>Brooklyn Street.       | 586                                                                |
| Tributary No. 1 .....  | 140 ft downstream of<br>West Walnut Street. | 583                                                                |
|                        | 100 ft upstream of West<br>Walnut Street.   | 592                                                                |

Should be corrected to read:

| Source of flooding     | Location                               | Elevation<br>in feet,<br>national<br>geodetic<br>vertical<br>datum |
|------------------------|----------------------------------------|--------------------------------------------------------------------|
| Mauvaisterre<br>Creek. | 100 ft upstream of<br>Brooklyn Avenue. | 586                                                                |
| Tributary No. 1 .....  | 140 ft downstream of<br>Walnut Street. | 583                                                                |
|                        | 100 ft upstream of<br>Walnut Street.   | 592                                                                |

(National Flood Insurance Act of 1968 (Title  
XIII of Housing and Urban Development  
Act of 1968), effective January 28, 1969 (33  
FR 17804, November 28, 1968), as amended;  
42 U.S.C. 4001-4128; and the Secretary's de-  
legation of authority to Federal Insurance  
Administrator 43 FR 7719.)In accordance with Section 7(o)(4) of the  
Department of HUD Act, Section 324 of theHousing and Community Development  
Amendments of 1978, P.L. 95-557, 92 Stat.  
2080, this proposed rule has been granted  
waiver of Congressional review require-  
ments in order to permit publication at this  
time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35989 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-4769)

## NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for  
the City of Indian Wells, Riverside County,  
Calif.AGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or  
comments are solicited on the pro-  
posed base (100-year) flood elevations  
listed below for selected locations in  
the City of Indian Wells, Riverside  
County, California. These base (100-  
year) flood elevations are the basis for  
the flood plain management measures  
that the community is required to  
either adopt or show evidence of being  
already in effect in order to qualify or  
remain qualified for participation in  
the National Flood Insurance Program  
(NFIP).DATES: The period for comment will  
be ninety (90) days following the  
second publication of this proposed  
rule in a newspaper of local circulation  
in the above-named community.ADDRESSES: Maps and other infor-  
mation showing the detailed outlines  
of the flood-prone areas and the pro-  
posed base (100-year) flood elevations  
are available for review at City Hall,  
45-300 Club Drive, Indian Wells, Cali-  
fornia. Send comments to: Mr. Prince  
E. Peirson, City Manager, City of  
Indian Wells, City Hall, 45-300 Club  
Drive, Indian Wells, California 92260.FOR FURTHER INFORMATION  
CONTACT:Mr. Richard Krimm, Assistant Ad-  
ministrator, Office of Flood Insur-  
ance, Room 5270, 451 Seventh Street  
SW., Washington, D.C. 20410, 202-  
755-5581 or toll-free line 800-424-  
8872.SUPPLEMENTARY INFORMATION:  
The Federal Insurance Administrator  
gives notice of the proposed determi-  
nations of base (100-year) flood eleva-  
tions for the City of Indian Wells,  
California, in accordance with section  
110 of the Flood Disaster Protection  
Act of 1973 (Pub. L. 93-234), 87 Stat.980, which added section 1363 to the  
National Flood Insurance Act of 1968;  
(Title XIII of the Housing and Urban  
Development Act of 1968 (Pub. L. 90-  
448)), 42 U.S.C. 4001-4128, and 24 CFR  
1917.4(a).These elevations, together with the  
flood plain management measures re-  
quired by § 1910.3 of the program re-  
gulations, are the minimum that are re-  
quired. They should not be construed  
to mean the community must change  
any existing ordinances that are more  
stringent in their flood plain manage-  
ment requirements. The community  
may at any time enact stricter require-  
ments on its own, or pursuant to poli-  
cies established by other Federal,  
State, or regional entities. These pro-  
posed elevations will also be used to  
calculate the appropriate flood insur-  
ance premium rates for new buildings  
and their contents and for the second  
layer of insurance on existing build-  
ings and their contents.The proposed base (100-year) flood  
elevations for selected locations are:

| Source of flooding                    | Location                                                                                                             | Depth, feet<br>above<br>ground |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Deep Canyon<br>Stormwater<br>Channel. | West of Cook Street<br>along Deep Canyon<br>Stormwater Channel<br>and south of Deep<br>Canyon Stormwater<br>Channel. | 3                              |

(National Flood Insurance Act of 1968 (Title  
XIII of Housing and Urban Development  
Act of 1968), effective January 28, 1969 (33  
FR 17804, November 28, 1968), as amended;  
42 U.S.C. 4001-4128; and Secretary's dele-  
gation of authority to Federal Insurance Ad-  
ministrator, 43 FR 7719.)In accordance with Section 7(o)(4) of the  
Department of HUD Act, Section 324 of the  
Housing and Community Development  
Amendment of 1978, P.L. 95-557, 92 Stat.  
2080, this proposed rule has been granted  
waiver of Congressional review require-  
ments in order to permit publication at this  
time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35986 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-4770)

## NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for  
the City of San Juan Capistrano, Orange  
County, Calif.AGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or  
comments are solicited on the pro-  
posed base (100-year) flood elevations  
listed below for selected locations in  
the City of San Juan Capistrano,  
Orange County, California. These base  
(100-year) flood elevations are the  
basis for the flood plain management  
measures that the community is re-  
quired to either adopt or show evi-  
dence of being already in effect in  
order to qualify or remain qualified  
for participation in the National Flood  
Insurance Program (NFIP).DATE: The period for comment will  
be ninety (90) days following the  
second publication of this proposed  
rule in a newspaper of local circulation  
in the above-named community.ADDRESSES: Maps and other infor-  
mation showing the detailed outlines  
of the flood-prone areas and the pro-  
posed base (100-year) flood elevations  
are available for review at City Hall,  
32400 Baseo Adelanto, San Juan Ca-  
pistrano, California. Send comments  
to: Mr. James S. Mocalis, City Man-  
ager, City of San Juan Capistrano,  
City Hall, 32400 Baseo Adelanto, San  
Juan Capistrano, California 92675.FOR FURTHER INFORMATION  
CONTACT:Mr. Richard Krimm, Assistant Ad-  
ministrator, Office of Flood Insur-  
ance, Room 5270, 451 Seventh Street  
SW., Washington, D.C. 20410, 202-  
755-5581 or toll-free line 800-424-  
8872.SUPPLEMENTARY INFORMATION:  
The Federal Insurance Administrator  
gives notice of the proposed determi-  
nations of base (100-year) flood eleva-  
tions for the City of San Juan Capis-  
trano, California, in accordance with  
section 110 of the Flood Disaster Pro-  
tection Act of 1973 (Pub. L. 93-234), 87  
Stat. 980, which added section 1363 to  
the National Flood Insurance Act of  
1968 (Title XIII of the Housing and  
Urban Development Act of 1968 (Pub.  
L. 90-448)), 42 U.S.C. 4001-4128, and  
24 CFR 1917.4(a).These elevations, together with the  
flood plain management measures re-  
quired by § 1910.3 of the program re-  
gulations, are the minimum that are re-  
quired. They should not be construed  
to mean the community must change  
any existing ordinances that are more  
stringent in their flood plain manage-  
ment requirements. The community  
may at any time enact stricter require-  
ments on its own, or pursuant to poli-  
cies established by other Federal,  
State, or regional entities. These pro-  
posed elevations will also be used to  
calculate the appropriate flood insur-  
ance premium rates for new buildings  
and their contents and for the second  
layer of insurance on existing build-  
ings and their contents.The proposed base (100-year) flood  
elevations for selected locations are:

| Source of flooding   | Location                                                   | Elevation<br>in feet,<br>national<br>geodetic<br>vertical<br>datum |
|----------------------|------------------------------------------------------------|--------------------------------------------------------------------|
| San Juan Creek ..... | 100 feet upstream from<br>Corporate Limits.                | 38                                                                 |
|                      | Atchinson, Topeka and<br>Santa Fe Railroad—<br>10 feet*.   | 73                                                                 |
|                      | La Novia Street—10<br>feet*.                               | 106                                                                |
| Trabuco Creek .....  | Dej Obispo Street—75<br>feet*.                             | 90                                                                 |
|                      | Oso Road—25 feet* .....                                    | 141                                                                |
|                      | Atchinson, Topeka and<br>Santa Fe Railway—25<br>feet*.     | 163                                                                |
|                      | Camino Capistrano—25<br>feet*.                             | 186                                                                |
|                      | At upstream corporate<br>Limits.                           | 235                                                                |
| Horno Creek .....    | Interstate Highway 5<br>(downstream<br>crossing)—10 feet*. | 103                                                                |
|                      | Acjachema Street—10<br>feet*.                              | 130                                                                |
|                      | At upstream Corporate<br>Limits.                           | 209                                                                |

\* Upstream from centerline

(National Flood Insurance Act of 1968 (Title  
XIII of Housing and Urban Development  
Act of 1968), effective January 28, 1969 (33  
FR 17804, November 28, 1968), as amended  
42 U.S.C. 4001-4128; and Secretary's dele-  
gation of authority to Federal Insurance Ad-  
ministrator, 43 FR 7719.)In accordance with Section 7(o)(4) of the  
Department of HUD Act, Section 324 of the  
Housing and Community Development  
Amendments of 1978, P.L. 95-557, 92 Stat.  
2080, this proposed rule has been granted  
waiver of Congressional review require-  
ments in order to permit publication at this  
time for public comment.

Issued: October 24, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.

(FR Doc. 78-35987 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-4771)

## NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for  
the Unincorporated Areas of Walker County,  
Ga.AGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or  
comments are solicited on the pro-  
posed base (100-year) flood elevations  
listed below for selected locations in  
the unincorporated areas of Walker  
County, Ga. These base (100-year)  
flood elevations are the basis for the



flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Property Records Office, Walker County Courthouse, P.O. Box 445, LaFayette, Ga. 30728. Send comments to: Mr. Roy Parrish, Walker County Commissioner, or Mr. Dewey Richardson, Property Records Office, Walker County Courthouse, LaFayette, Ga. 30728.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of Walker County, Ga., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding                           | Location                                                      | Elevation in feet, national geodetic vertical datum |
|----------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------|
| Chattanooga Creek.                           | Intersection of Wilson Road and northern corporate limits.    | 650                                                 |
|                                              | Just upstream of Ridgeland Road (Georgia Highway 148).        | 676                                                 |
|                                              | Just upstream of Georgia Highway 341.                         | 690                                                 |
| Coke Oven Branch.                            | Just upstream of Wheeler Avenue.                              | 700                                                 |
|                                              | Just upstream of Wallaceville School Road.                    | 779                                                 |
|                                              | Just upstream of Wallaceville Mission Road.                   | 869                                                 |
|                                              | Just upstream of FAS 1025.                                    | 871                                                 |
| Crawfish Creek                               | Just upstream of Glass Mill Road.                             | 730                                                 |
|                                              | Just upstream of Straight Cut Road.                           | 776                                                 |
| Dry Creek                                    | Just upstream of Maple Street.                                | 850                                                 |
|                                              | Just upstream of Salem Road.                                  | 678                                                 |
|                                              | Just downstream of Georgia Highway 240.                       | 718                                                 |
| Ellis Branch                                 | Just upstream of Chattanooga Valley Road.                     | 696                                                 |
|                                              | Approximately 150 feet downstream of Southern Railway Bridge. | 695                                                 |
| Unnamed Tributary to Coke Oven Branch.       | Just upstream of Wilder Road.                                 | 734                                                 |
| Unnamed Tributary to West Chickamauga Creek. | Just downstream of Wilder Road.                               | 733                                                 |
| Unnamed Tributary to West Chickamauga Creek. | Approximately 50 feet upstream of FAS 1352.                   | 751                                                 |
| Unnamed Tributary to West Chickamauga Creek. | Just upstream of Jenkins Road.                                | 813                                                 |
| West Chickamauga Creek.                      | Just upstream of William Howard Taft Highway (US Highway 27). | 720                                                 |
|                                              | Just downstream of Glass Mill Road.                           | 730                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.

(FR Doc. 78-35988 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4772]

#### NATIONAL FLOOD INSURANCE PROGRAM

**Proposed Flood Elevation Determinations for the City of Keosauqua, Van Buren County, Iowa**

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Keosauqua, Van Buren County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Keosauqua, Iowa. Send comments to: The Honorable Ford I. Gano, Mayor, City of Keosauqua, City Hall, Keosauqua, Iowa 52565.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Keosauqua, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain manage-

ment requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                          | Elevation in feet, national geodetic vertical datum |
|--------------------|-----------------------------------|-----------------------------------------------------|
| Des Moines River   | At downstream Corporate Limit.    | 674                                                 |
|                    | 700 feet upstream of Main Street. | 676                                                 |
|                    | At upstream Corporate Limit.      | 676                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirement in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35990 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4773]

#### NATIONAL FLOOD INSURANCE PROGRAM

**Proposed Flood Elevation Determinations for the Town of Mountain Lake Park, Garrett County, Md.**

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Mountain Lake Park, Garrett County, Maryland. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified

for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Mountain Lake Park Town Hall, Mountain Lake Park, Maryland.

Send comments to: Honorable Russell Alexander, Mayor of Mountain Lake Park, Mountain Lake Park, Maryland 21550.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Mountain Lake Park, Garrett County, Maryland in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding         | Location                                      | Elevation in feet, national geodetic vertical datum |
|----------------------------|-----------------------------------------------|-----------------------------------------------------|
| Little Youghiogheny River. | Chessie System at Downstream Corporate Limit. | 2,392                                               |
|                            | Old Bridge Road                               | 2,396                                               |

| Source of flooding                              | Location                                     | Elevation in feet, national geodetic vertical datum |
|-------------------------------------------------|----------------------------------------------|-----------------------------------------------------|
|                                                 | State Route 135 at Upstream Corporate Limit. | 2,399                                               |
| Unnamed Tributary to Little Youghiogheny River. | Downstream Corporate Limit.                  | 2,390                                               |
|                                                 | Upstream of Chessie System Culvert.          | 2,393                                               |
|                                                 | Allegany Drive Culvert.                      | 2,393                                               |
|                                                 | Downstream of Oak Street Culvert.            | 2,408                                               |
|                                                 | Upstream of Oak Street Culvert.              | 2,418                                               |
|                                                 | Downstream of State Route 135 Culvert.       | 2,440                                               |
|                                                 | Upstream of State Route 135 Culvert.         | 2,451                                               |
|                                                 | Downstream of Oakland Drive Culvert.         | 2,454                                               |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35991 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4774]

#### NATIONAL FLOOD INSURANCE PROGRAM

**Proposed Flood Elevation Determinations for the Unincorporated Areas of LeFlore County, Miss.**

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of LeFlore County, Mississippi. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the



second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at LeFlore County Court House, Greenwood, Mississippi 38930. Send comments to: Mr. Ray Tribble, President, LeFlore County Board of Supervisors, or Mr. Willis B. Brumfield, Chancery Clerk, LeFlore County Court House, Greenwood, Mississippi 38930.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

#### SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of LeFlore County, Mississippi, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding  | Location                             | Elevation in feet, national geodetic vertical datum |
|---------------------|--------------------------------------|-----------------------------------------------------|
| Yukon River         | Just upstream U.S. Highway 82 & 49E. | 131                                                 |
| Tallahatchie River. | Just upstream Money St.              | 136                                                 |
| Yalobusha River     | Just upstream Whaley Road.           | 134                                                 |
|                     | Just upstream Avalon Road.           | 135                                                 |

| Source of flooding           | Location                                                    | Elevation in feet, national geodetic vertical datum |
|------------------------------|-------------------------------------------------------------|-----------------------------------------------------|
| Pelucia Creek                | *Just upstream Highway 49E.                                 | 127                                                 |
|                              | Just upstream Mississippi Highway 430.                      | 138                                                 |
| Muddy-Gin Bayou              | Just upstream of bridge. Southwest of New Jerusalem Church. | 116                                                 |
|                              | Just downstream U.S. Highway 82 Bridge.                     | 123                                                 |
| Old Pelucia Creek—Blue Lake. | Just upstream Mississippi Highway 430.                      | 129                                                 |
|                              | Just upstream U.S. Highway 82.                              | 131                                                 |
| Walker Lake Canal.           | At Walker Lake pumping plant.                               | 123                                                 |
| Craig Canal                  | Just upstream U.S. Highway 49E.                             | 128                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.

(FR Doc. 78-35992 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4775]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Metuchen, Middlesex County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Metuchen, Middlesex County, New Jersey. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the

second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Metuchen City Hall, Metuchen, New Jersey. Send comments to: Honorable Donald J. Wernik, Mayor of Metuchen, P.O. Box 592, Metuchen, New Jersey 08840.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

#### SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Metuchen, Middlesex County, New Jersey in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding       | Location                                                         | Elevation in feet, national geodetic vertical datum |
|--------------------------|------------------------------------------------------------------|-----------------------------------------------------|
| Dismal Brook             | Culvert at Sewage Treatment Plant near Jersey Avenue (Upstream). | 80                                                  |
|                          | Conrail Railroad Spur (Upstream).                                | 77                                                  |
|                          | Downstream Corporate Limits.                                     | 71                                                  |
| Tributary to Mill Brook. | Orchard Avenue (Upstream).                                       | 82                                                  |

| Source of flooding | Location                     | Elevation in feet, national geodetic vertical datum |
|--------------------|------------------------------|-----------------------------------------------------|
|                    | Downstream Corporate Limits. | 79                                                  |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-36006 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4776]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Heath, Licking County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Heath, Licking County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Offices, 1287 Hebron Avenue, Heath, Ohio. Send comments to: The Honorable John Geller, Mayor, City of Heath, 1287 Hebron Avenue, Heath, Ohio 43055.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

#### SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Heath, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding        | Location                                  | Elevation in feet, national geodetic vertical datum |
|---------------------------|-------------------------------------------|-----------------------------------------------------|
| Licking River             | Confluence of Lateral Q                   | 812                                                 |
|                           | Downstream corporate limit.               | 810                                                 |
| South Fork Licking River. | Upstream corporate limit.                 | 860                                                 |
|                           | Just upstream of Liberty Drive.           | 852                                                 |
|                           | Just upstream of Irving Wick Drive.       | 845                                                 |
|                           | Just upstream of Chessie System.          | 841                                                 |
|                           | Just downstream of Chessie System.        | 839                                                 |
|                           | Just upstream of Hopewell Drive.          | 821                                                 |
|                           | Downstream corporate limit.               | 819                                                 |
| Ramp Creek                | Just downstream of Thornwood Drive.       | 886                                                 |
|                           | Confluence of Lateral F.                  | 879                                                 |
|                           | 190 feet downstream of Conrail.           | 876                                                 |
|                           | 1,675 feet downstream of Conrail.         | 873                                                 |
|                           | Just upstream of State Route 79.          | 856                                                 |
|                           | Confluence with South Fork Licking River. | 851                                                 |
| Lateral A                 | 510 feet upstream of Summit Sheet.        | 813                                                 |

| Source of flooding | Location                                              | Elevation in feet, national geodetic vertical datum |
|--------------------|-------------------------------------------------------|-----------------------------------------------------|
|                    | Confluence with Licking River.                        | 811                                                 |
| Lateral Q          | 3,350 feet upstream of Blue Jay Road.                 | 918                                                 |
|                    | 2,500 feet upstream of Jay Road.                      | 886                                                 |
|                    | Just upstream of Blue Jay Road.                       | 868                                                 |
|                    | Just downstream of Blue Jay Road.                     | 858                                                 |
|                    | Just upstream of Summit Street.                       | 823                                                 |
|                    | Just downstream of Summit Street.                     | 814                                                 |
| Lateral B          | 330 feet upstream of State Route 13.                  | 870                                                 |
|                    | Just upstream of State Route 13.                      | 868                                                 |
|                    | Downstream corporate limit.                           | 841                                                 |
| Lateral C          | 1.15 miles upstream of State Route 79.                | 878                                                 |
|                    | Just upstream of State Route 79.                      | 860                                                 |
|                    | Just downstream of State Route 79.                    | 855                                                 |
|                    | Just upstream of 30th Street.                         | 852                                                 |
|                    | Just downstream of 30th Street.                       | 847                                                 |
|                    | Confluence of South Fork Licking River.               | 841                                                 |
| Lateral D          | 1,960 feet upstream of Irving Wick Drive East.        | 936                                                 |
|                    | Downstream corporate limit at Irving Wick Drive East. | 915                                                 |
| Lateral E          | Upstream corporate limit.                             | 903                                                 |
|                    | Just upstream of Conrail.                             | 903                                                 |
|                    | Just downstream of Conrail.                           | 898                                                 |
|                    | Downstream corporate limit.                           | 897                                                 |
| Lateral E-A        | 2,950 feet upstream of corporate limits.              | 895                                                 |
|                    | Downstream corporate limit.                           | 880                                                 |
| Lateral F          | 1,130 feet upstream of confluence of Lateral F-A.     | 890                                                 |
|                    | Confluence of Lateral F-A.                            | 882                                                 |
| F-A                | 2,700 feet upstream of confluence with Lateral F.     | 899                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.

(FR Doc. 78-35993 Filed 12-27-78; 8:45 am)



[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-47771)

**NATIONAL FLOOD INSURANCE PROGRAM****Proposed Flood Elevation Determination for the Borough of Beaver, Beaver County, Pa.****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Beaver, Beaver County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Building, Beaver, Pennsylvania. Send comments to: Honorable Robert P. Linn, Mayor of Beaver, 469 Third Street, Beaver, Pennsylvania 15009.**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Beaver, Beaver County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more

**PROPOSED RULES**

stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                     | Elevation in feet, national geodetic vertical datum |
|--------------------|------------------------------|-----------------------------------------------------|
| Ohio River         | Downstream Corporate Limits. | 702                                                 |
|                    | Upstream Corporate Limits.   | 703                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35994 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-47778)

**NATIONAL FLOOD INSURANCE PROGRAM****Proposed Flood Elevation Determinations for the Borough of Catawissa, Columbia County, Pa.****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Catawissa, Columbia County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified

for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Building, Catawissa, Pennsylvania. Send comments to: Honorable Richard Snyder, Mayor of Catawissa, 517 Fisher Avenue, Catawissa, Pennsylvania 17820.**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Catawissa, Columbia County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                     | Elevation in feet, national geodetic vertical datum |
|--------------------|------------------------------|-----------------------------------------------------|
| Susquehanna River. | Downstream Corporate Limits. | 473                                                 |
|                    | State Route 42 (Upstream).   | 474                                                 |

**PROPOSED RULES**

| Source of flooding                  | Location                            | Elevation in feet, national geodetic vertical datum |
|-------------------------------------|-------------------------------------|-----------------------------------------------------|
| Catawissa Creek                     | Upstream Corporate Limits Extended. | 475                                                 |
|                                     | Downstream Corporate Limits.        | 474                                                 |
|                                     | State Route 42                      | 476                                                 |
| Tributary No. 1 to Catawissa Creek. | Dam (Upstream).                     | 477                                                 |
|                                     | Confluence with Catawissa Creek.    | 476                                                 |
|                                     | State Route 42 Culvert.             | 481                                                 |
|                                     | Upstream Corporate Limits.          | 485                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35995 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-47779)

**NATIONAL FLOOD INSURANCE PROGRAM****Proposed Flood Elevation Determinations for the Township of Catawissa, Columbia County, Pa.****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Catawissa, Columbia County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations

are available for review at the Municipal Building, Catawissa, Pennsylvania. Send comments to: Mr. Frank Ernest, Supervisor of the Township of Catawissa, R.D. 1, Catawissa, Pennsylvania 17820.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Catawissa, Columbia County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding                  | Location                          | Elevation in feet, national geodetic vertical datum |
|-------------------------------------|-----------------------------------|-----------------------------------------------------|
| Susquehanna River.                  | CONRAIL (centerline)...           | 476                                                 |
|                                     | State Route 487 (centerline).     | 479                                                 |
| Roaring Creek                       | Downstream Corporate Limits.      | 653                                                 |
|                                     | Covered Bridge No. 12 (Upstream). | 692                                                 |
|                                     | Upstream Corporate Limits.        | 711                                                 |
| Catawissa Creek                     | Downstream Corporate Limits.      | 478                                                 |
|                                     | Covered Bridge No. 40             | 481                                                 |
|                                     | Upstream Corporate Limits.        | 503                                                 |
| Tributary No. 1 to Catawissa Creek. | Downstream Corporate Limits.      | 485                                                 |
|                                     | Private Bridge                    | 500                                                 |
|                                     | Legislative Route 19087.          | 700                                                 |
|                                     | Steel Culvert                     | 765                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35996 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

(Docket No. FI-47801)

**NATIONAL FLOOD INSURANCE PROGRAM****Proposed Flood Elevation Determinations for the Township of Cecil, Washington County, Pa.****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Cecil, Washington County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, R. D. 3, McDonald, Pennsylvania. Send comments to: Mr. Richard Barnes, Chairman of the Township of Cecil, Municipal Building, R.D. 3, McDonald, Pennsylvania 15087.**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.



**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Cecil, Washington County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding   | Location                                   | Elevation in feet, national geodetic vertical datum |
|----------------------|--------------------------------------------|-----------------------------------------------------|
| Chartiers Creek..... | Conrail Bridge                             | 862                                                 |
|                      | Downstream of Main Street                  |                                                     |
|                      | Main street                                | 866                                                 |
|                      | South dead end of Center Avenue            | 868                                                 |
|                      | Conrail Bridge                             | 871                                                 |
|                      | Upstream of Main Street                    |                                                     |
|                      | Interstate 79                              | 917                                                 |
|                      | Confluence of Morganza Reservoir Tributary | 918                                                 |
|                      | Conrail Bridge                             | 921                                                 |
|                      | Downstream of Morganza Road                |                                                     |
| Morganza Road.....   | Morganza Road                              | 922                                                 |
|                      | Curry Avenue                               | 925                                                 |
|                      | Upstream Corporate Limits                  | 926                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35997 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4781]

**NATIONAL FLOOD INSURANCE PROGRAM**

Proposed Flood Elevation Determinations for the City of Duquesne, Allegheny County, Pa.

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Duquesne, Allegheny County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Duquesne City Hall, 12 South Second Street, Duquesne, Pennsylvania. Send comments to: Honorable Francis Daley, Duquesne City Hall, 12 South Second Street, Duquesne, Pennsylvania 15110.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Duquesne, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                                                   | Elevation in feet, national geodetic vertical datum |
|--------------------|------------------------------------------------------------|-----------------------------------------------------|
| Monongahela River. | Downstream Corporate Limits                                | 740                                                 |
|                    | Port Perry Bridge                                          | 740                                                 |
|                    | Conrail Bridge                                             | 740                                                 |
|                    | Grant Avenue Extension                                     | 741                                                 |
|                    | At a point 1 mile downstream of McKeesport-Duquesne Bridge | 742                                                 |
|                    | McKeesport-Duquesne Bridge                                 | 743                                                 |
|                    | Upstream Corporate Limits                                  | 743                                                 |
|                    |                                                            |                                                     |
|                    |                                                            |                                                     |
|                    |                                                            |                                                     |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35998 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4782]

**NATIONAL FLOOD INSURANCE PROGRAM**

Proposed Flood Elevation Determinations for the Borough of Industry, Beaver County, Pa.

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Industry, Beaver County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at The Borough Building, Industry, Pennsylvania. Send comments to: Honorable Clyde Piquet, Mayor of Industry, P.O. Box 218, Industry, Pennsylvania 15052.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Industry, Beaver County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                     | Elevation in feet, national geodetic vertical datum |
|--------------------|------------------------------|-----------------------------------------------------|
| Ohio river.....    | Midland-Shippingsport Bridge | 595                                                 |
|                    | Confluence of Wolf Run       | 596                                                 |
|                    | Confluence of Sixmile Run    | 597                                                 |
|                    | Montgomery Locks and Dam     | 598                                                 |
|                    | Upstream Corporate Limit     | 700                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
(FR Doc. 78-35999 Filed 12-27-78; 8:45 am)

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4783]

**NATIONAL FLOOD INSURANCE PROGRAM**

Proposed Flood Elevation Determinations for the Township of Salem, Luzerne County, Pennsylvania

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Salem, Luzerne County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

**ADDRESS:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, Salem, Pennsylvania. Send comments to: Mr. Bruce Thomas, Chairman of the Board of Supervisors of Salem, R.D. 1, Berwick, Pennsylvania 18603.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Salem, Luzerne County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                    | Elevation in feet, national geodetic vertical datum |
|--------------------|-----------------------------|-----------------------------------------------------|
| Susquehanna River. | Downstream Corporate Limits | 550                                                 |
|                    | Pennsylvania Route 239      | 522                                                 |
|                    | Upstream Corporate Limits   | 522                                                 |
| Mud Swamp Creek.   | Downstream Corporate Limits | 558                                                 |
|                    | Holly Drive                 | 591                                                 |
|                    | Bombay Lane                 | 510                                                 |
|                    | Sholtz Road                 | 640                                                 |
| Salem Creek.....   | Conrail                     | 513                                                 |
|                    | U.S. Route 11 (Downstream)  | 515                                                 |
|                    | U.S. Route 11 (Upstream)    | 529                                                 |



## PROPOSED RULES

| Source of flooding                    | Location                           | Elevation in feet, national geodetic vertical datum |
|---------------------------------------|------------------------------------|-----------------------------------------------------|
| Walker Run                            | Legislative Route 40029            | 626                                                 |
|                                       | Sholtz Road                        | 637                                                 |
|                                       | Hollen Road                        | 655                                                 |
|                                       | Church Street                      | 614                                                 |
|                                       | Conrail                            | 528                                                 |
|                                       | U.S. Route 11                      | 532                                                 |
|                                       | Private Bridge                     | 644                                                 |
|                                       | Township Route 417                 | 648                                                 |
|                                       | Thomas Road                        | 656                                                 |
|                                       | Private Bridge                     | 658                                                 |
| Tributary No. 17 to Susquehanna River | Private Bridge                     | 661                                                 |
|                                       | Thomas Road                        | 670                                                 |
|                                       | Conrail Downstream                 | 517                                                 |
|                                       | Conrail Upstream                   | 521                                                 |
|                                       | U.S. Route 11 (Downstream)         | 522                                                 |
|                                       | U.S. Route 11 (Upstream)           | 531                                                 |
|                                       | (Downstream Crossing)              | 541                                                 |
|                                       | Legislative Route 40028 Downstream | 547                                                 |
|                                       | (Downstream Crossing)              | 547                                                 |
|                                       | Legislative Route 40028 Upstream   | 583                                                 |
|                                       | (Upstream Crossing)                | 583                                                 |
|                                       | Legislative Route 40028 Upstream   | 639                                                 |
|                                       | Private Bridge                     | 639                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
[FR Doc. 78-36000 Filed 12-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4784]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Borough of White Oak, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of White Oak, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the com-

munity is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Borough Secretary, White Oak, Pennsylvania.

Send comments to: Mr. Thomas Entertine, President of the Council of White Oak, 2280 Lincoln Way, White Oak, Pennsylvania 15131.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of White Oak, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                                                                                     | Elevation in feet, national geodetic vertical datum |
|--------------------|----------------------------------------------------------------------------------------------|-----------------------------------------------------|
| Youghiogheny River | Downstream Corporate Limits (River Mile 4.71)                                                | 750                                                 |
|                    | Upstream Corporate Limits (River Mile 5.87)                                                  | 752                                                 |
| Long Run           | Rippel Road (Upstream)                                                                       | 792                                                 |
|                    | Lincolnway Road (Upstream)                                                                   | 819                                                 |
|                    | Confluence of Jacks Run                                                                      | 819                                                 |
|                    | Lincolnway Road (Upstream)                                                                   | 831                                                 |
|                    | Oakview Drive (Upstream)                                                                     | 835                                                 |
|                    | Mystic Hills Road (Upstream)                                                                 | 846                                                 |
|                    | Private Drive (Upstream) located approximately 2,100' upstream of Mystic Hills Road Crossing | 866                                                 |
|                    | Rankin Road (Upstream)                                                                       | 876                                                 |
|                    | Coulterville Road (Upstream)                                                                 | 890                                                 |
|                    | Upstream Corporate Limits                                                                    | 911                                                 |
| Jacks Run          | At confluence with Long Run                                                                  | 819                                                 |
|                    | Splash Dam (Upstream) located 500' above mouth                                               | 825                                                 |
|                    | Splash Dam (Upstream) located 1,225' above mouth                                             | 830                                                 |
|                    | Private Drive (Upstream) located approximately 3,075' above mouth                            | 844                                                 |
|                    |                                                                                              |                                                     |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
[FR Doc. 78-36001 Filed 12-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4785]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Greer, Greenville County, S.C.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the pro-

posed base (100-year) flood elevations listed below for selected locations in the City of Greer, Greenville County, South Carolina. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 106 South Main Street, Greer, South Carolina 29651.

Send comments to: Mayor W. Barnett, City Hall, 106 South Main Street, Greer, South Carolina 29651.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Greer, Greenville County, South Carolina, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

## PROPOSED RULES

| Source of flooding | Location                            | Elevation in feet, national geodetic vertical datum |
|--------------------|-------------------------------------|-----------------------------------------------------|
| Maple Creek        | Just downstream of Bushy Creek Road | 911                                                 |
|                    | Just downstream of Polar Drive      | 881                                                 |
|                    | Just upstream of Harvey Road        | 872                                                 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
[FR Doc. 78-36002 Filed 12-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4786]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Waller, Waller County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Waller, Waller County, Texas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at The Waller City Hall, Waller, Texas. Send comments to: Honorable Danny Marburger, Mayor of Waller, Waller City

Hall, P.O. Box 238, Waller, Texas 77484.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Waller, Waller County, Texas in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding                          | Location                             | Elevation in feet, national geodetic vertical datum |
|---------------------------------------------|--------------------------------------|-----------------------------------------------------|
| Tributary No. 1 at Mile 6.18 of Mound Creek | Downstream Corporate Limits          | 235                                                 |
|                                             | Washington Street (Upstream)         | 242                                                 |
|                                             | Southern Pacific Railroad (Upstream) | 247                                                 |
|                                             | Taylor Street (Upstream)             | 247                                                 |
|                                             | Field Store Road (Upstream)          | 251                                                 |
|                                             | Dam (Downstream)                     | 251                                                 |
|                                             | Dam (Upstream)                       | 253                                                 |
|                                             | Upstream Corporate Limits            | 264                                                 |
|                                             | Washington Street (Upstream)         | 240                                                 |
|                                             | Southern Pacific Railroad (Upstream) | 242                                                 |
| Tributary No. 2 at Mile 9.39 of Mound Creek | Waller Street (Upstream)             | 243                                                 |
|                                             | Daugherty Street (Upstream)          | 246                                                 |
|                                             | Extended (Upstream)                  |                                                     |
|                                             | Mayer Road (Upstream)                | 254                                                 |



(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
[FR Doc. 78-36003 Filed 12-27-78; 8:45 am]

#### [4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4787]

#### NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Vader, Lewis County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Vader, Lewis County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Vader, Washington. Send comments to: Honorable Frank Zelsnack, Mayor, Town of Vader, P.O. Box 178, Vader, Washington 98593.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator

gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Vader, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by §1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

| Source of flooding | Location                                           | Elevation in feet, national geodetic vertical datum |
|--------------------|----------------------------------------------------|-----------------------------------------------------|
| Olequa Creek.....  | Northern Pacific Railroad Bridge—50 feet*          | 104                                                 |
|                    | Vader Road (State Bridge 506/104)—50 feet*         | 116                                                 |
| McMurphy Creek..   | Northern Pacific Railroad Culvert (Upstream side). | 147                                                 |
|                    | East Culvert (Second crossing)—30 feet*.           | 154                                                 |

\* Upstream of centerline

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued October 25, 1978.

GLORIA M. JIMENEZ,  
Federal Insurance Administrator.  
[FR Doc. 78-36004 Filed 12-27-78; 8:45 am]

#### [4310-31-M]

#### DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 250]

#### OPERATIONS IN THE OUTER CONTINENTAL SHELF

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking is being issued to invite public participation in the identification and selection of a course of action, or alternate courses of action, for the control of air emissions on the Outer Continental Shelf (OCS) that significantly affect the air quality of any State. The amendments to the Outer Continental Shelf Lands Act, Pub. L. 95-372, require the Secretary of the Interior to prescribe regulations for the control of certain air pollution sources on the OCS. After consideration of available data and comments received in response to this notice, a notice of proposed rulemaking will be issued.

DATE: Comments must be received on or before January 31, 1979.

ADDRESS: Comments should be forwarded to Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT:

Theresa Hooks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. (202-343-4325).

AUTHORS: E. P. Danenberger, U.S. Geological Survey, U.S. Department of the Interior; Theresa Hooks, Office of the Solicitor, U.S. Department of the Interior; R. A. Karam, Office of OCS Program Coordination, Office of the Assistant Secretary—Policy, Budget and Administration; and Thomas McCloskey, Office of the Assistant Secretary—Energy and Minerals.

SUPPLEMENTARY INFORMATION: The Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. 95-372, enacted on September 18, 1978, provide that the Secretary of the Interior shall prescribe regulations with provisions "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State" (section 5(a)(8), 43 U.S.C. 1334). The Joint Explanatory Statement of the Committee of Conference, Report No. 95-1474, 95th Congress 2nd

Session, describes the congressional intent in enacting this provision.

The Statement indicates that Congress intended for the Secretary of the Interior to establish a regulatory scheme to ensure that the attainment or maintenance of the ambient air quality standards of an area is not jeopardized by air emissions from operations occurring on the OCS. The Report states: "The standard of applicability the conferees intended the Secretary to incorporate in such regulations is that when a determination is made that offshore operations may have or are having a significant effect on the air quality of an adjacent on-shore area, and may prevent or are preventing the attainment or maintenance of the ambient air quality standards of such area, regulations are to be promulgated to assure that offshore operations conducted pursuant to this act do not prevent the attainment or maintenance of those standards." The Conferees expressly stated that the Secretary of the Interior shall be guided by the Clean Air Act, in consultation with the Environmental Protection Agency, in promulgating regulations to maintain consistency with ambient air quality standards.

The Department intends that operations and activities on the OCS will not be approved if they prevent any State from achieving and maintaining national ambient air quality standards. In implementing a regulatory scheme for air quality control, the Department intends to require lessees to include in their exploration and development and production plans specific information concerning emissions and their effects on coastal areas. It is intended that all proposed activities will be subject to compliance with the requirements of the statute. However, detailed information may not be necessary for certain types of operations and for operations in some parts of the OCS. The Department intends to devise methods by which existing operations can be brought into the regulatory scheme, and the Department intends to continue to work closely and cooperatively with State and local officials in the area of air quality control.

Although the Department intends to control emissions that would prevent the attainment of national ambient air quality standards in a State, or cause non-attainment where the standards are being met, it is unclear whether standards designed to prevent significant deterioration should also be applied and, if so, which standards, State or Federal, should be used. Similarly, whether or not the Environmental Protection Agency's current offset policy should be adopted, in whole or in part, requires further examination. Finally, the phrase "significantly affect" must be analyzed and defined.

REQUEST FOR COMMENT: Any relevant comment on this statutory provision will be reviewed and taken into account in the formulation of proposed rules. Information submitted should be as specific as possible as to the OCS activity of concern and the type of emissions discussed. Comments from interested parties are specifically requested in the following areas:

1. Proposed activities will be subject to review by the Department to assure compliance with air quality regulations. At the time of submission of plans for exploration or for development and production, the lessee will be asked to submit information on projected emissions and the estimated effects of these emissions on any State.

a) What methods for determining projected emissions and estimated effects should be used for OCS sources?

b) Should information be required on projected emission levels both with and without the application of technologies specifically designed to abate emissions?

c) Should specific abatement technologies be prescribed by the Department of the Interior? Should information about projected emissions using these technologies be required of lessees?

d) Are there OCS areas for which a general finding of lack of significant effect can be made so that detailed submissions by individual lessees are unnecessary?

e) Should sources of emissions which are on the OCS for limited periods of time, such as drilling vessels, be controlled? If so, what length of time should be used?

2. The Department intends to control any activity that would impair a State's ability to attain the national ambient air quality standards or would cause non-attainment where these standards are being met. Both the OCS Lands Act, as amended, and the Clean Air Act, as amended, are oriented toward the attainment of national ambient air quality standards. On the other hand, the legislative history of the OCS Lands Act Amendments of 1978 indicates that State standards for ambient air quality require Federal agencies' consideration. For instance, the Statement of the Conference Committee provides: "The conferees agreed that if an approved State implementation plan has ambient air quality standards which are more stringent than the national ambient air quality standards, the Secretary of the Interior shall, with appropriate regulations, assure that offshore operations conducted pursuant to this act do not prevent the attainment of those State standards, if the air quality of that State is significantly affected by such offshore operations."

a) In establishing specific controls of emissions that affect the air quality of any State, what consideration should be given to State ambient air quality standards that are more stringent than the national standards?

b) In view of the express language of section 5(a)(8) of the OCS Lands Act, as amended, can State standards be used when "compliance with the national ambient air quality standards" is expressly directed by the statute?

3. The statute requires that the Department control, by regulation, the emissions on the OCS that "significantly affect" the air quality of any State. The Department is considering defining "significantly affect" in terms of additions of pollutants, in amounts to be determined, to an area which is in non-attainment of the national ambient air quality standards or would become a non-attainment area due to the projected emissions. It will be necessary to determine the amount and types of pollutants for which it is reasonable and practical to require controls.

a) What amounts of specific pollutants would constitute a "significant effect" when added to an area which is in non-attainment status?

b) How should precursors of photochemical oxidants be controlled? How should the relationship between the precursors and photochemical oxidants be determined?

c) In determining "significant effect", should the Department use the quantitative approach applied by EPA in its prevention of significant deterioration standards?

d) Are there other methods the Department should consider to determine "significantly affects"?

4. Because of the language of the OCS Lands Act Amendments calling for regulations "for compliance with the national ambient air quality standards", the Department is considering limiting its control of OCS emissions to: (1) instances where onshore areas in non-attainment of national standards are subject to further degradation of air quality; and (2) instances where attainment areas would become non-attainment areas if impacted by the projected emissions from OCS operations. Another option is to regulate all emissions impacting onshore areas, whether the area is in attainment or non-attainment, so that not only are national ambient standards attained but air quality which is cleaner than that required by the national ambient standards is also protected.

a) Which option should the Department adopt?

b) If the Department determines that its regulations should prohibit OCS operations from contributing to the significant deterioration of air quality which is cleaner than the na-



tional ambient standards, should EPA's standards for preventing significant deterioration (PSD) be employed? Should the Department adopt more stringent State PSD standards?

5. In certain instances, the Environment Protection Agency regulates air quality in non-attainment areas by requiring that, by the time the proposed source of emissions is to commence operations, the total emissions from existing sources and from the proposed source must be sufficiently less than the total allowable emissions under the State Implementation Plan so as to represent reasonable progress toward attainment of national ambient air quality standards. If they are not, the new source must meet EPA's offset requirements. Other requirements imposed by EPA in non-attainment areas include: that a major new source, or major modification, will meet the lowest achievable emission rate for the particular type of source; that all existing sources owned by the applicant located in the air quality control region are in compliance with all requirements of the State Implementation Plan; and, that emission offsets will provide a positive net air quality benefit in the affected area.

a) As part of his authority to regulate OCS emissions which significantly affect non-attainment areas, should the Secretary require the lessees to enter into legally binding commitments to offset their emissions even though onshore offsets would be necessary?

b) Should all of EPA's conditions for new sources or major modifications to existing sources in non-attainment areas be applied to OCS operations?

c) If the EPA conditions are adopted by Interior, should they be modified for purposes of OCS operations? How?

6. Existing sources of pollutants on the OCS may require special consideration. To what extent should control of emissions from existing facilities be required when such control would require major modification of the facility?

7. The Department intends to continue close and cooperative associations with State and local governments.

a) How should the Department interact with local air pollution control districts? Directly? Through State agencies?

b) What procedures and mechanisms should be used to help assure State and local participation in air quality matters?

c) What should the State role be in enforcement?

This advance notice of proposed rulemaking is based on the authority of section 5 of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1334).

Dated: December 22, 1978.

JOAN M. DAVENPORT,  
Assistant Secretary  
of the Interior.

[FR Doc. 78-36065 Filed 12-27-78; 8:45 am]

[4910-14-M]

# DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Parts 127 and 165]

[CGD17-78-1R2]

## PORT VALDEZ, VALDEZ, ALASKA

Proposed Establishment of a Safety Zone

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Commander, Seventeenth Coast Guard District is considering changing the security zone and safety zone regulations in order to convert the existing security zone in Port Valdez, Valdez, Alaska into a safety zone. This proposal is being made because it is believed that a safety zone is a more appropriate means of protecting the marine environment and vessels within Port Valdez.

DATE: Comments must be received on or before January 15, 1979.

ADDRESS: Comments should be submitted to, and are available for examination at, the office of the Commander (m), Seventeenth Coast Guard District, P.O.B. 3-5000, Federal Building, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT:

LCDR F. N. HARRELL, Chief, Port Safety Branch (mps), Seventeenth Coast Guard District, P.O.B. 3-5000, Juneau, Alaska 99802, 907-586-7195.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the proposed rule making by submitting written data, views, comments or arguments. Each person submitting a comment should identify his name and address, identify the Notice (CGD17-78-1R2), and give reasons for any recommendations. Comments received before January 15, 1979 will be considered before final action is taken on this proposal. The proposal may be changed in light of the comments received.

DRAFTING INFORMATION: The principal person involved in drafting this proposal is LCDR F. N. Harrell, Chief, Port Safety Branch, Marine Safety Division, Seventeenth Coast Guard District.

## DISCUSSION OF THE PROPOSED REGULATION CHANGE

Section 127.1701 presently designates a security zone that includes an area within 200 yards of any waterfront facility at the Alyeska Marine Terminal complex and an area within 200 yards of any tank vessel maneuvering to approach, moor, unmoor, or depart the Alyeska Marine Terminal complex. This security zone was established to protect the marine environment around the Alyeska Marine Terminal as well as vessels operating in that area. The only enforcement provision for violations of a security zone is criminal prosecution. Based on experience obtained since the creation of the security zone around the Alyeska Marine Terminal complex, it has been determined that this area should be converted to a safety zone so that any violations of the zone would result in the more appropriate civil penalty rather than in criminal prosecution. As provided in the General Safety Zone Regulations (33 CFR 155.20) no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander.

In consideration of the foregoing, it is proposed to amend 33 CFR Chapter I, as follows:

### PART 127—SECURITY ZONE

1. By deleting § 127.1701.

### PART 165—SAFETY ZONE

2. By adding § 165.1701 to read as follows:

§ 165.1701 Port Valdez, Valdez, Alaska

The waters within the following boundaries are a safety zone: The area within 200 yards of any waterfront facility at the Alyeska Marine Terminal complex and the area within 200 yards of any tank vessel maneuvering to approach, moor, unmoor or depart the Alyeska Marine Terminal complex.

(92 STAT. 1471 (33 USC 1225); 49 CFR 1.46(n)(4))

Dated: December 7, 1978.

ROBERT A. DUIN,  
Rear Admiral, U.S. Coast  
Guard, Commander, Seven-  
teenth Coast Guard District.

[FR Doc. 78-36136 Filed 12-27-78; 8:45 am]

[7710-12-M]

## POSTAL SERVICE

[39 CFR Parts 310 and 320]

### RESTRICTIONS ON PRIVATE CARRIAGE OF LETTERS

Proposed Revisions in Comprehensive Standards for Permissible Private Carriage of Letters

AGENCY: Postal Service.

ACTION: Proposed rulemaking.

SUMMARY: After more than four years' experience under existing regulations implementing the postal monopoly laws, certain changes are proposed in the regulations. Some of the changes are proposed to clarify the existing regulations and to reflect results that have been reached in advisory opinions rendered under existing regulations. A few changes alter the results reached in advisory opinions under the existing regulations. New suspensions of the monopoly provisions are proposed for certain letters of college- or university-related organizations being carried by campus mail systems, certain letters relating to cargo shipped internationally by ocean carriers, and certain advertisements enclosed with parcels containing merchandise.

The explanation of the proposed changes set out below under "Supplementary Information" is lengthy because of a desire to be complete. Many changes are proposed. A careful reading is urged so that points of interest to particular persons will not be overlooked. Highlights of the proposed changes are as follows:

1. A new suspension for advertisements, accompanying parcels of merchandise, of goods offered for sale by the shipper of the merchandise or manufactured by the manufacturer of the goods shipped.

2. A new suspension for documents relating to cargo shipped on international ocean-going vessels.

3. A new suspension for letters of bona fide student or faculty organizations that are carried by college or university internal mail systems.

4. Clarification of the definition of the term "letter" to leave no doubt that items not marked with addresses are nevertheless subject to the postal monopoly if delivered in accordance with "selective delivery plans".

5. A definition of the term "telegram" to make clear that this exclusion is restricted to telegrams and does not reach other types of "hard copy" messages involving electronic transmissions.

6. Clarification of the exclusion for "commercially supplied letters" to make clear that this exclusion does not cover letters that contain the messages of the supplier. This change

would mean, for example, that the postal monopoly prohibitions apply when identical letters in whatever quantity are sent to a given address for reading by people working or living there.

7. A change in the suspension for certain data processing materials to resolve an ambiguity in the present suspension by including the punching of cards within the scope of "data processing" for purposes of the suspension.

Because of the length and complexity of the proposed rules, it is possible that a "second round" of proposed rules will be published after comments are received following this publication. It may also be desirable to act finally on certain of the proposed changes before acting finally on others. Finally, it could be useful to hold hearings in Washington, D.C., and in other places in the country to elicit public views and to answer questions about the proposal. Persons believing that hearings should be held are encouraged to make their views known at the address or telephone number listed below.

DATE: Comments must be received on or before (45 days), 1979.

ADDRESS: Written comments should be addressed to: Jerry Belenker, Law Department, U. S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 A.M. and 4 P.M., outside room 9120, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Jerry Belenker, Law Department, U. S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260; (202) 245-4616.

SUPPLEMENTARY INFORMATION: On September 16, 1974, the Postal Service published final regulations as Parts 310 and 320 of Title 39, Code of Federal Regulations, relating to the restrictions on the private carriage of letters, to become effective on October 20, 1974. 39 FR 33,209-13. Relatively minor revisions to the regulations were published in the FEDERAL REGISTER on October 8, 1974, and May 29, 1975. 39 FR 36,114; 40 FR 23,295. The Postal Service now proposes additional changes in its regulations.

In publishing on July 2, 1973, the original Notice of Proposed Rulemaking that preceded the adoption of final regulations in September 1974, the Postal Service articulated an intention to adopt a definition of "letter" "based on a traditional and objective standard: a message sent to a specific address." 38 FR 17 513. The definition of letter included in the final regula-

tions—"a message directed to a specific person or address and recorded in or on a tangible object . . .", § 310.1(a)—appears to have served well, and the definition has been approved judicially. *Associated Third Class Mail Users v. United States Postal Service*, 440 F. Supp. 1211 (D. D.C. 1977), appeal pending, United States Court of Appeals for the District of Columbia Circuit, No. 78-1065. It appears, however, that the definition can be improved in minor respects and that other improvements in the regulations can and ought to be proposed at this time. In addition, operation under the regulations suggests that certain additional administrative suspensions of the prohibitions on the private carriage of letters may be in the public interest and ought to be proposed at this time.

The changes now proposed are intended, in substantial part, to clarify the regulations published in September 1974. They reflect the more than four years of experience under the regulations in which the regulations have been found to be workable and generally understandable, but in which a few difficult areas of interpretation have emerged. Good administrative practice suggests that improvements be proposed to the regulations based on the experience with them to date. Certain of the proposed changes involve materials that seem most appropriately to fall outside of the postal monopoly, while other changes involve materials that seem to fall within the monopoly. In addition to clarifying changes, we propose to suspend the monopoly prohibitions for three new categories of materials. These proposed suspensions are discussed towards the end of the preamble.

### THE REQUIREMENT THAT LETTERS BE ADDRESSED

An essential aspect of the definition of "letter" under the Private Express Statutes is that it be addressed, and the "directed to" language included in § 310.1(a) was intended to cover this aspect. Some ambiguity under the regulation may exist, however, in cases where the message is addressed to one party but arguably is "directed to" another. For example, business messages intended for reading by one or more individuals at a firm may be addressed to the firm not by the name or names of the intended readers but by the name of another individual who may, for example, be known to be one who distributes letters to others; by the title of an official other than the individual who is intended to read the messages; or by the firm name. Arguably, such messages are not "directed to a specific person or address" under the regulations, despite the specific addressing of the envelope containing



them. It seems clear, however, that letters and packets of letters of this kind should be considered to be covered by the prohibitions contained in the Private Express Statutes.

Postal Service advisory opinions, issued in accordance with § 310.6, have concluded that letters or packets of letters of the kind described above fall within the "directed to" requirement of the existing regulations. Proposed revised § 310.1(a)—by defining letters as addressed messages rather than as messages directed to a particular person or place—is intended to meet the addressing requirement head on in a way that eliminates the ambiguities arguably present in the prior use of the term "directed to". It also avoids seeming to attempt to ascertain the sender's intent and is consistent with the general goal of setting forth objective criteria to guide the public.

Proposed § 310.1(a)(3) defines address objectively: marking an item for selective delivery or delivering an item in accordance with a selective delivery plan. The latter recognizes that letters not marked with addresses may nevertheless be addressed, for example, by marking the intended person or place of delivery on a list or on labels or cards held separately from the piece actually delivered, by delivering the pieces in accordance with a memorized list of addresses, or by piggy-backed delivery schemes in which letters are delivered along with such things as addressed parcels or magazines. Such methods of achieving selective delivery ought not to remove the messages transmitted from the reach of the postal monopoly.

The proposed definition of addressing as it bears on the selective delivery of material not marked with an address is consistent with the focus in existing § 310.1(a)(3) on persons to whom or addresses to which messages are directed, a point that serves to underscore the clarifying nature of the proposed change. As before, substantially random unaddressed delivery methods—such as handing out messages not marked with addresses to passersby on street corners, or delivering such messages throughout an area—do not fall within the prohibitions of the Private Express Statutes. A sentence is proposed to make this intent clear.

#### CERTAIN TANGIBLE OBJECTS NOT LETTERS

A new second sentence is proposed for § 310.1(a)(1) to make clear that all tangible objects upon which messages appear do not constitute letters. While no person has, during the more than four-year period that the Postal Service's regulations have been in effect, indicated he has been misled by the terms of existing § 310.1(a)(1) into be-

lieving that such things as out-sized, odd-shaped, or extremely valuable objects are letters, it has occasionally been asserted that the regulations are overly broad because they theoretically might reach such objects if there is writing upon them. While the regulations were intended to reach as broadly as required to cover tangible business and personal correspondence of all types, we did not and do not consider that such things as tombstones, T-shirts, automobile tires, coffee mugs, jewelry, or other items occasionally cited to us, as these objects are commonly used and shipped, constitute letters, even though some writing may appear upon them. The proposed new sentence is intended to make this intention clear.

The present text of § 310.1(a)(6) would be amended to conform to proposed changes discussed above. A new second sentence, in parentheses, would be added as a clarifying cross-reference.

#### EXCLUSION OF "TELEGRAMS"

Existing § 310.1(a)(7)(i) contains the exclusion for telegrams. This exclusion is based on historical considerations, not on the language of the Private Express Statutes. The proposals preceding the existing regulations would have excluded telegrams as follows: "The specific form of letter known as a telegram is implicitly exempted from the restrictions by Congress." (The words "of the Private Express Statutes" were added after the word "restrictions" in the second Notice of Proposed Rulemaking.) 38 FR 17514 (July 2, 1973); 39 FR 3971 (Jan. 31, 1974). In the final regulations, the exclusion was shortened to simply the word "Telegrams".

The preamble to the final regulations stated:

*Electronic message transmission.* The comments reflected some continuing misunderstanding over whether the Private Express Statutes reach the transmission of messages through the air, by wire, or by other means not involving the carriage of tangible objects. In our view, they do not. However, the carriage of a tangible object used as the basis of an intangible transmission or produced thereby—such as a written copy of a message sent by wire between two places—would be subject to the Statutes. . . . 39 FR 33210 (Sept. 16, 1974).

Read in light of the simultaneous exclusion for telegrams, this statement means that while telegrams are excluded, "hard copies" of electronic messages generally are not excluded.

Recently, questions have arisen as to the meaning of the term "telegrams" as used in the regulations. The language used in the prior Notices of Proposed Rulemaking and the preambulatory material accompanying the final regulations point to the conclusion that the term was intended to be limit-

ed in scope. The clarifying change proposed here would define the term by limiting it to telegrams as commonly sent in the past by members of the public. Such a limitation seems consistent with an exclusion that is based on implications surrounding the growth of a public telegram service during the late nineteenth and early twentieth centuries that is different from other types of electronic message services that have developed recently.

#### LIEN, RELEASES, ORDERS OF QUASI-JUDICIAL BODIES

Section 310.1(a)(7)(iii) would be amended to list liens in general, releases, and orders of quasi-judicial bodies among the legal documents excluded from the coverage of the Private Express Statutes. This change in part conforms to results reached in advisory opinions under the existing regulations, and it rounds out the language of the existing provision by including certain additional documents that are similar to those already listed.

#### BOOKS AND CATALOGS

Section 310.1(a)(7)(v) now excludes "books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories". In applying this exclusion, questions have arisen about whether bound items that contain the prescribed number of pages that consist, in turn, of largely unrelated parts that individually do not contain the prescribed number of pages qualify under the exclusion. Questions have also arisen about whether specialized documents of limited distribution qualify under the exclusion. Proposed expanded language in this exclusion is intended to focus attention on some of the relevant factors to evaluate in determining whether the exclusion should apply to a particular item. The proposed guideline that would generally look to the distribution of copies of a document to 25 or more separate persons as one factor indicating that the document is a book or a catalog would be somewhat more restrictive than a 15-copy guideline developed in advisory opinions under the existing regulations.

#### TAGS, LABELS, STICKERS, SIGNS AND POSTERS

Proposed new § 310.1(a)(7)(vi) (current § 310.1(a)(7)(vi)) would be covered by proposed § 310.1(a)(7)(viii) in part would confirm results reached in advisory opinions under existing regulations that such things as address labels and bumper stickers are not letters subject to the postal monopoly prohibitions. The intent of the proposed exclusion is to provide a general rule for dealing with the matter of messages for attachment to or posting

on other tangible objects. The mere fact that a letter is sent for attachment or posting would not, however, be grounds for excluding the letter from the postal monopoly prohibitions. Objective considerations of type size, layout, and physical characteristics would have to indicate that the object was primarily intended for attachment or posting before the exclusion would be available.

#### LETTERS SENT TO STORAGE OR DESTRUCTION OR AS PART OF A RELOCATION

Section 310.1(a)(7)(vii) would be amended to eliminate the requirement that packets of letters sent to or from storage or to destruction or as part of a business or household relocation must be sent in bulk to qualify for the exclusion. Since letters sent for these purposes in whatever bulk are clearly not sent as communications, it seems appropriate to eliminate the bulk requirement. Other clarifying language is added, including language to make clear that this exclusion covers materials sent for storage or destruction only if they are sent exclusively for this purpose.

#### COMMERCIALLY SUPPLIED LETTERS

Proposed § 310.1(a)(7)(viii) would contain the substance of what is now § 310.1(a)(7)(vi), the exclusion for identical letters supplied by one person for another's use, expanded to cover supplied printed matter generally. The revisions in this provision are intended to make clear that the exclusion covers only messages that are the messages of the person supplied. It would do this by including an additional example of the kind of supplier we have in mind—a "Stationer"—and by specifying that the suppliers be commercial. It would also add a sentence underscoring the point that the provision does not cover messages which contain the messages of the supplier or of anyone else than the person supplied. A firm producing and supplying its own messages seems to stand on a different footing for purposes of a postal monopoly reaching "letters" from a firm merely producing and supplying the messages to someone else, and the clarification is intended to reflect this distinction.

The requirement in the present regulation that the messages be supplied in bulk would be eliminated. Since letters of this kind in whatever bulk are not sent as communications, it seems appropriate to eliminate the bulk requirement.

In *Wall Disney Music Company, Inc. v. United States Postal Service*, Civ. No. 76-2391-IH (C.D. Cal. Nov. 18, 1976) (unreported), the Court concluded that existing § 310.1(a)(7)(vi) excludes shipments of five or more copies of Disney materials to be dis-

tributed through its Magic Kingdom Clubs to employees at various firms. The Court left open the possibility that this result could be changed through subsequent rulemaking. The rules proposed here would bring about this change.

#### PHOTOGRAPHIC MATERIALS

Proposed new § 310.1(a)(7)(ix) would exclude photographic material sent to a processor and processed photographic material returned from a processor. Many photographic materials would not in any event constitute letters since they do not contain messages within the meaning of § 310.1(a)(2), (4), but certain photographic materials—such as microfilm or microfiche—may, in our view, be letters within the meaning of the Private Express Statutes. Since such letters so commonly require mechanical or chemical processing away from the premises of the person whose letters they are, by processors who have no interest in and do no work with the messages contained in the letters, the new exclusion for transmission to and from the place where such processing is performed is proposed. This exclusion would accord with results reached under advisory opinions rendered under the existing regulations.

#### MATERIALS SENT BETWEEN PUBLISHERS AND PRINTERS

New § 310.1(a)(7)(x) would exclude copy, proofs and printed matter passing between publishers and printers. The existing regulations do not generally exclude these materials.

The principal theory behind the proposed new exclusion is similar to that undergirding the proposed exclusion, described above, for certain transmissions of photographic materials, namely that printers are disinterested in the substance of the messages contained in copy, proofs, and printed matter transmitted to and from them. The frequent bulkiness of the materials transmitted is an additional factor supporting this proposed exclusion. In proposing this new exclusion we stress that its application—like the application of all exclusions in § 310.1(a)(7)—is limited by its terms. The proposed rules would not, for example, exclude all messages passing to or from people having little interest in their substance, nor do we intend generally to revive the "live, current information test" sometimes applied prior to the adoption of the current regulations. See 38 FR 17513 (July 2, 1973). On the other hand, if there are other types of messages passing between other types of persons for the exclusion of which as many equally strong arguments can be made as can be made for this proposed exclusion, we would hope to hear about them during this rulemak-

ing, and we will carefully consider adopting additional exclusions if we do hear about them.

#### SOUND RECORDINGS, FILMS, AND PRINTED MESSAGES FOR PUBLIC DISTRIBUTION

Proposed new § 310.1(a)(7)(xi) covers situations in which one person sends messages to another person for dissemination to the public. Examples of messages falling under this exclusion are those involved in a request the Postal Service received for an advisory opinion on the status of blank fishing license forms sent from a state licensing office to issuers of licenses in various county offices. The proposed exclusion will provide a firmer basis for excluding these blank forms from the ambit of the postal monopoly than the grounds relied on in the advisory opinion, namely that blank forms are not letters, and that forms of this kind might fall within the exclusion provided in existing § 310.1(a)(7)(vi).

A blank form appears to fall within the letter definition insofar as it contains a message ("any information or intelligence that can be recorded . . .") on a tangible object. § 310.1(a)(2). Moreover, as we have suggested above, present § 310.1(a)(7)(vi) (proposed § 310.1(a)(7)(viii)) was not intended to reach messages such as blank license forms that are the messages of the supplier. (Blank forms supplied, for example, by a stationer that are used by a person supplied for his own purposes would, of course, fall within proposed § 310.1(a)(7)(viii).) The distinction drawn in the new exclusion is between messages sent for dissemination to people all of whom reside in a particular household or are associated with a particular organization at the place of address, or who are all reasonably identifiable to the sender, on the one hand, and messages sent for further dissemination, on the other. The proposal would provide no exclusion for shipments of the former type because of the close ties between the person or place of address and the intended readership or audience of the messages sent.

#### "PACKET"

Revised § 310.1(b) would specify that the term "packet" includes groups of identical as well as different letters and that a "packet" can consist of several packets of letters under one cover or otherwise bound together. Both changes are clarifications and are consistent with advisory opinions rendered under the existing regulations. The second clarification confirms the advisory opinion that the opening or creating of a "packet of packets" makes the exception in § 310.3(e) for carriage prior or subsequent to mailing inapplicable to carriage prior to the



creating, or subsequent to the opening, of the "packet of packets".

#### "PERSON"

A revision is proposed to § 310.1(c) to add "organization" to the definition of the term "person" as used in the regulations. The term "person" was intended to be broadly inclusive, and the proposed addition of the word "organization" is consistent with this purpose.

#### EXCEPTIONS

Proposed § 310.3(a), the exception for letters accompanying cargo, contains a change that would make clear that letters relating to the transaction involved in ordering, shipping, or delivering the cargo fall within the exception. This specifically covers a result that was reached by interpretation in advisory opinions rendered under the existing regulations. In addition, the proposal would eliminate the existing requirement that the letters must "relate exclusively" to some part of the cargo, replacing it with the requirement that the letters "relate in all substantial respects". This also is intended to conform the language of the regulation more closely to results reached in advisory opinions under the current regulations.

The proposed revisions in § 310.3(b)—the exception relating to letters of the carrier—are intended to clarify the meaning of this exception as it applies to letters of firms.

Revised § 310.3(c) would define compensation for purposes of the exception for carriage by "private hands without compensation" to make clear that it includes carriage for money, non-monetary valuable consideration, and good will, for example, when a business relationship exists or is sought between the carrier and its user. The proposal reflects results reached in advisory opinions rendered under the existing regulations.

Revised § 310.3(e)(1) would clarify the intent that the exception for "carriage prior or subsequent to mailing" not be available for private carriage occurring after letters are opened or read, or for the private carriage of unopened individual letters before or after their transmission by mail in a consolidated form.

#### PAYMENT OF POSTAGE ON VIOLATION

Section 310.5(b) would be amended to make clear that the appeal to the Judicial Officer Department is limited to determining whether the method used to compute the postage owed is correct and does not include a redetermination of whether letters are being carried in violation of the Private Express Statutes.

#### ADVISORY OPINIONS

Section 310.6 would be amended to provide that advisory opinions can be obtained by writing to the Postal Service's Law Department rather than to its Opinions Division. The purpose of the change is to make clear that the Law Department may assign the work of writing advisory opinions to attorneys who do not work in the Opinions Division. The reference in the second sentence of this section to "final opinions" would be eliminated, and the sentence on the publishing of opinions would be rewritten to conform to existing practice.

#### SUSPENSIONS

We propose to rewrite Part 320 to alter the existing suspension for certain data processing materials and to add three new suspensions. Sections 320.1-320.3 would deal with general matters applicable to each of the suspensions in proposed Part 320. Section 320.3 would state the rule, consistent with existing § 320.2(d), that the suspensions may be revoked in the future and would restate the rule that existing operators under the data processing suspension would have some "grandfather rights" if that particular suspension is revoked.

#### CERTAIN DATA PROCESSING MATERIALS

The bulk of existing §§ 320.2 and 320.3 would be combined, without change, in proposed § 320.4. Proposed § 320.4(b) would revise existing § 320.2(b) in several respects. First, it would reflect the conclusion, reached in advisory opinions, that a transmission to a data processing center may qualify for the suspension even though the return transmission does not qualify, and *vice versa*. It specifies, however, that the validity of the return transmission depends upon the commencement of data processing on the incoming material within 36 hours of its arrival at the processing center. This would alter a result reached in a recent advisory opinion which, we believe, could have gone either way under the wording of the existing provision. Because the suspension is provided to meet a need for speedy transmission, however, it seems appropriate to require that the need for speed be attested to by the objective fact of the processing center's fairly prompt commencement of data processing work.

Proposed § 320.4(b) would also specify that the data processing suspension is not available to offices that neither use internal data processing centers nor are data processing customers of independent processing centers. The suspension was not intended to reach the potential vast range of transmissions of communications that may incidentally involve computer input or

output, such as ordinary bill paying transactions, applications for licenses, etc. This change would also alter a result reached in a recent advisory opinion which seems to be inconsistent with the original purpose of this suspension.

Section 320.4(c) would amend the definition of "data processing" as found in § 320.2(b) to include the recording, by electro-mechanical or electronic means, of data for further processing. The purpose of this proposed change is to reverse the results reached in some advisory opinions that the commencement of key punching does not constitute the commencement of data processing for purposes of the time limits under the suspension. The change seems to be consistent with industry opinion that key punching is part of data processing. The definition of "data processing materials" in the same provision would be amended to eliminate the contradictory reference to "automatic conversion into a form ready for immediate data processing". In addition, the definition of "data processing materials" would add the requirement that such materials must be sent "exclusively for data processing". This would serve to confirm the result reached in advisory opinions that materials sent for substantial independent action prior to possible or likely data processing do not fall under the suspension.

Section 320.4(c) would also amend language found in the last sentence of present § 320.2(b) to change the requirement that data processing materials be produced on "a regular periodic basis" to one that they be produced "recurringly in the course of the normal business operations of the office originating them or receiving them back from the processing center." This language is somewhat more flexible than the prior regulatory standard, though it continues the rule that isolated transmissions are not covered. This change also is in line with the direction taken in advisory opinions under the existing regulations.

A minor change is proposed in § 320.4(d) (existing § 320.3(a)) to make clear that only carriers—not shippers—are required to notify the Private Express Liaison Officer before operating under the suspension.

A clarifying change is proposed in the second sentence of § 320.4(e) (existing § 320.3(b)). A new third sentence proposed in this provision would specify that containers of materials asserted to be carried under the suspension must show who is the sender and who is the addressee of the materials shipped, as an aid to assuring that the operations assertedly under the suspension are conducted in accordance with the requirements of the regula-

tion. Minor changes in the form reproduced in the regulations are proposed to conform to changes being proposed in Part 320.

#### CERTAIN ADVERTISEMENTS IN PARCELS

A new suspension is proposed in § 320.5 to cover certain advertisements enclosed in parcels of merchandise. We have been told that a widespread industry practice exists in which shippers or manufacturers of merchandise place advertisements of other goods they sell or manufacture in parcels that are shipped. In first proposing the present regulations, the Postal Service indicated that where the public interest seemed to support an established practice, the practice would not be disturbed. 38 FR 17513. Our view in proposing this suspension is that the public interest does not require that the practice that presently appears to exist be discontinued.

The suspension we propose is a limited one. It specifically does not extend to advertisements for goods that are neither sold by the shipper nor manufactured by the manufacturer of the goods shipped. We do not believe the public interest requires that shippers or manufacturers be allowed to conduct what amounts to an advertising business outside the mails for other persons by allowing the latter to piggy-back their shipments of cargo by private carriers.

To a similar purpose is the requirement that the goods advertised be in the same general line of products as the cargo shipped. This provision would not be given a narrow reading that defeats the purposes of the proposed suspension. On the other hand, it does not seem appropriate to give shippers or manufacturers—which may be vast enterprises engaging in many lines of business—preferred status under the postal monopoly laws to advertise totally unrelated goods they sell or produce when sending parcels to their customers.

The proposed suspension does not cover shipments when the shipment of the enclosed advertising is other than incidental to the shipment of the merchandise. Thus, for example, when the merchandise is a sample, the advertising enclosed will remain a letter, subject to the Private Express Statutes. Similarly, the proposed suspension specifically covers only advertisements. Other material—such as, for example, product information and order blanks sent to sales personnel for their use and information—are not covered by the suspension.

#### CERTAIN LETTERS OF COLLEGE AND UNIVERSITY ORGANIZATIONS

It appears that a number of colleges and universities have for some time permitted student and faculty organi-

zations to send their intra-campus letters via the college or university internal mail system. As in the case of certain advertisements in parcels, the public interest seems to support action to permit this practice to continue.

College and university communities have special qualities that seem to set them apart from other groups. As much as anything else, this seems to be so because colleges and universities are thought of as "communities" that embrace a variety of organizations rather than as merely the legal or economic entities responsible for providing formal educational services. Thus, while student and faculty organizations are not legally part of the college or university, they often are recognized as performing important functions in the operation of the academic community. In addition, they are often supported in a number of ways by the college or university proper. Given the public service mission of colleges and universities, it seems appropriate to permit those colleges and universities that want to make their internal mail systems available to their student and faculty organizations to do so.

The proposed suspension is limited to the letters of student and faculty organizations sent to campus destinations. It is not intended to cover such things as student letters, faculty letters, letters of outside organizations (such as commercial firms), or letters sent off campus. We expect the colleges and universities to assist in the enforcement of these limitations by permitting access to their internal mail systems only in accordance with the limitations reflected in the suspension. Of course, nothing in the suspension requires any college or university to make its internal mail system available to organizations if it does not want to do so.

#### LETTERS RELATED TO CARGO SHIPPED INTERNATIONALLY BY OCEAN VESSELS

In 1976 the Postal Service and the Customs Service undertook a joint program to examine certain materials entering the country at Boston and San Francisco for possible violations of the Private Express Statutes. One category of items identified by that program as being carried in apparent violation of the Statutes consisted of documents transmitted by air, related to cargo of international ocean-going vessels.

After the joint program was terminated, a group called the National Committee on International Trade Documentation (NCITD), representing a number of major ocean vessel operators, submitted a request that the Postal Service exempt these documents from the prohibitions of the postal monopoly. The NCITD petition

stated that modern-day conditions make it impossible for these documents to accompany the cargo on the ships themselves, since in fact the documents cannot be completed before the ship leaves port. The petition underscored the importance for customs, commercial, operational, and legal reasons of having the documents on hand when the ship arrives at its destination and stated that international mail service simply cannot fill the need for the rapid transmission of these materials.

The arguments of the NCITD appear to have considerable merit, and we respond to them in this Notice of Proposed Rulemaking. A suspension is proposed of the prohibitions on the private carriage of these materials moving internationally to and from ocean vessel ports-of-call. Shipments between United States ports or from or to the interior of the country would not be covered by the proposed suspension. The materials covered are limited to those that would be excepted under the "cargo" exception, § 310.3(a), if they accompanied the cargo. The fact that such materials would be excepted but for peculiar conditions in the shipping industry that make their separate transmission necessary is a factor leading us to propose adoption of this suspension.

#### EFFECT ON PRIOR ADVISORY OPINIONS

Our purpose in adopting comprehensive private express regulations has been to provide understandable general guidance in a single location for the application of the postal monopoly laws. Although questions will undoubtedly continue to arise on how the regulations apply in particular circumstances, we hope that many questions will be answered by the changes proposed here. Accordingly, it is expected that it will not be necessary to rely extensively on the Advisory Opinions rendered in the past under § 310.6 in applying the revised regulations.

To the extent prior advisory opinions deal with matters that would be left unchanged by this proposal, they may, however, provide some continuing guidance on the application of the regulations. To the extent the past opinions deal with matters that change as a result of the current rulemaking, they of course should not be relied upon in the future.

#### PROSPECTIVE EFFECT OF CHANGES

Any changes that may be adopted as a result of this proposal will apply only to transmissions occurring on and after the date they become effective. With regard to transmissions occurring before that time, the Postal Service will take no action to recover postage under § 310.5 or to enforce the Private Express Statutes in court except



in reliance on the Statutes and regulations in effect when the transmission occurred.

#### MATTERS NOT COVERED BY PROPOSED RULES

The public is encouraged to use this rulemaking proceeding to comment on any matter properly the subject of a Postal Service rule in the postal monopoly area, regardless of whether the subject is covered by the proposed rules set out below. Should sufficient public need be shown for additional changes, the rulemaking can be expanded to deal with them. If changes are suggested that tend to permit new types of private carriage of letters, we would appreciate specific suggestions on how to adopt them without unduly risking significant contractions in the scope of the postal monopoly.

#### COMMENTS

In consideration of the foregoing, it is proposed to amend Parts 310 and 320 in Chapter I of Title 39, Code of Federal Regulations, as follows:<sup>1</sup>

Louis A. Cox,  
General Counsel

#### PART 310—ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

Sec.

- 310.1. Definitions.
- 310.2. Unlawful carriage of letters.
- 310.3. Exceptions.
- 310.4. Responsibility of carriers.
- 310.5. Payment of postage on violation.
- 310.6. Advisory opinions.
- 310.7. Amendment of regulations.

AUTHORITY: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699, 1724.

##### § 310.1 Definitions.

(a) "Letter" is an addressed message recorded in or on a tangible object, subject to the following:

(1) Tangible objects used for letters include, but are not limited to, paper (including paper in sheet or card form), recording disks, and magnetic tapes. Tangible objects used for letters do not include (i) objects the material or shape and design of which make them valuable or useful for purposes other than as media for long-distance communications, unless they are actually used as media for personal and business correspondence, and (ii) oversized, rigid objects not capable of enclosure in envelopes, sacks, boxes or other containers commonly used to transmit letters or packets of letters.

<sup>1</sup>Because of the extensive changes proposed, proposed revised Parts 310 and 320 are set out in their entirety below. The following sections of the existing regulations are not, however, changed, in the proposal: § 310.1(a)(2), (4), (5); (7)(ii), (iv); (d), (e), (f); § 310.2; 310.3(b)(3); (d); (e)(2); § 310.4; § 310.5(a), (c), (d); § 310.7. Other provisions may be changed only in part or in minor respects.

(2) "Message" means any information or intelligence that can be recorded as described in paragraph (a)(4) of this section.

(3) A message is addressed when it, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan. Selective delivery plans include delivery to particular persons or addresses by use of detached address labels or cards; address lists; memorized groups of addresses; or piggy-backed delivery with addressed articles of merchandise, publications, or other items. Selective delivery plans do not include such distributions as distributions of materials not marked for delivery to specific persons or places to passersby on a particular street corner or to all residents, or to randomly selected residents, of an area.

(4) Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.

(5) Whether a tangible object bears a message is to be determined on an objective basis without regard to the intended or actual use made of the object sent.

(6) Identical messages addressed to more than one specific person or place or separately addressed to the same specific person or place constitute separate letters. (Identical messages addressed in a single container to a specific person or place constitute a packet of letters. See § 310.1(b).)

(7) The following are not letters within the meaning of these regulations:

(i) Telegrams. "Telegrams" are messages on paper which result from electronic transmissions by carriers which accept the messages at their public offices, or via the public telephone network, in written or oral form and manually enter the messages by alpha or numeric characters into a transmitter for transmission to their public offices in other places.

(ii) Checks, drafts, promissory notes, bonds, other negotiable and non-negotiable financial instruments, stock certificates, other securities, insurance policies, and title policies when shipped to, from, or between financial institutions.

<sup>1</sup>Several of the items enumerated in this paragraph (a)(7) do not self-evidently lie outside of the definition of "letter". To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

(A) As used above, "checks" and "drafts" include documents intrinsically related to and regularly accompanying the movement of checks or drafts within the banking system. "Checks" do not include materials accompanying the movement of checks to financial institutions from persons who are not financial institutions, or vice versa, except such materials as would qualify under § 310.3(a) if "checks" were treated as cargo. Specifically, for example, "checks" do not include bank statements sent to depositors showing deposits, debits, and account balances.

(B) As used above, "financial institutions" means:

(1) As to checks and drafts: banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities.

(2) As to other instruments: institutions performing functions involving the bulk generation, clearance, and transfer of such instruments.

(iii) Abstracts of title, mortgages and other liens, deeds, leases, releases, articles of incorporation, papers filed in lawsuits or formal quasi-judicial proceedings, and orders of courts and of quasi-judicial bodies.

(iv) Newspapers and periodicals.

(v) Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories. Separate letters of less than 24 bound and 22 printed pages bound to other material do not qualify for this exclusion. In determining whether separate letters have been bound to other material, the following factors will be considered, along with any other relevant factors: whether the parts are visually similar; whether the parts were printed and bound together at the same time and by the same process; whether the binding serves an important purpose and has been a long-standing practice; and whether the same individual reads all parts of the bound document. ordinarily, books and catalogs deal with matters of general interest and are published for and distributed to a substantial number of recipients. In addition, books generally contain a substantial number of pages. Accordingly, this exclusion will not apply when the nature of the messages conveyed, the limited number of copies published and of recipients, the limited number of pages, or other relevant factors suggest that it is not appropriate to treat the material as constituting a book or catalog. An item not distributed privately, or privately and by mail, to 25 or more separate persons or places will generally not be treated as falling within this exclusion.

(vi) Tags, labels, stickers, signs or posters the type-size, layout or physical characteristics of which indicate

are primarily intended to be attached to other objects for reading.

(vii) Letters sent to a records storage center exclusively for storage, letters sent exclusively for destruction, letters retrieved from a records storage center, and letters sent as part of a household or business relocation.

(viii) Printed matter sent by a printer, stationer, or similar commercial supplier of letters to the person ordering the letters at a single address for use by such person as his letters. This exclusion does not cover printed matter that contains the messages of the supplier or anyone other than the person to whom the letters are supplied.

(ix) Photographic material being sent by a person to a processor and processed photographic material being returned from the processor to the person sending the material for processing.

(x) Copy sent from a publisher to an independent or company-owned printer and proofs or printed matter returned from the printer to a single office of the publisher.

(xi) Sound recordings, films, and packets of identical printed letters containing messages all or the overwhelming bulk of which are to be disseminated to the public. The "public" does not include individuals residing at the place of address; individuals employed by the organization doing business at the place of address (whether or not the actual place of employment is the place of address), if a business or other organization is located at the place of address; individuals who are members of an organization, if an organization is located at the place of address; or other individuals who, individually or as members of a group, are reasonably identifiable to the sender.

(b) "Packet" means two or more letters, identical or different, or two or more packets of letters, under one cover or otherwise bound together. As used in these regulations, unless the context otherwise requires, "letter" or "letters" includes "packet" or "packets".

(c) "Person" means an individual, corporation, association, partnership, governmental agency, or other organization or entity.

(d) "Post routes" are routes on which mail is carried by the Postal Service, and includes post roads as defined in 39 U.S.C. 5003, as follows:

(1) The waters of the United States, during the time the mail is carried thereon;

(2) Railroads or parts of railroads and air routes in operation;

(3) Canals, during the time the mail is carried thereon;

(4) Public roads, highways, and toll roads during the time the mail is carried thereon; and

(5) Letter-carrier routes established for the collection and delivery of mail.

(e) "Private carriage", "private carrier", and terms of similar import used in connection with the Private Express Statutes or these regulations mean carriage by anyone other than the Postal Service, regardless of any meaning ascribed to similar terms under other bodies of law or regulation.

(f) The "Private Express Statutes" are set forth in 18 U.S.C. 1693-1699 and 1724 and 39 U.S.C. 601-606 (1970).

(g) The term "identical printed letters" includes letters that differ only in name, address or serial number.

##### § 310.2 Unlawful carriage of letters.

(a) It is generally unlawful under the Private Express Statutes for any person other than the Postal Service in any manner to send or carry a letter on a post route or in any manner to cause or assist such activity. Violation may result in injunction, fine or imprisonment or both and payment of postage lost as a result of the illegal activity (see § 310.5).

(b) Activity described in paragraph (a) of this section is lawful with respect to a letter if—

(1) It is enclosed in an envelope or other suitable cover;

(2) The amount of postage which would have been charged on the letter if it had been sent through the Postal Service is paid by stamps, or postage meter stamps, on the cover or by other methods approved by the Postal Service;

(3) The name and address of the person for whom the letter is intended appear on the cover;

(4) The cover is so sealed that the letter cannot be taken from it without defacing the cover;

(5) Any stamps on the cover are canceled in ink by the sender; and

(6) The date of the letter, or of its transmission or receipt by the carrier, is endorsed on the cover in ink by the sender or carrier, as appropriate.

(c) The Postal Service may suspend the operation of any part of paragraph (b) of this section where the public interest requires the suspension.

(d) Activity described in paragraph (a) of this section is permitted with respect to letters which—

(1) Relate to some part of the cargo of, or to some article carried at the same time by, the conveyance carrying it (see § 310.3(a));

(2) Are sent by or addressed to the carrier (see § 310.3(b));

(3) Are conveyed or transmitted without compensation (see § 310.3(c));

(4) Are conveyed or transmitted by special messenger employed for the particular occasion only, provided that not more than twenty-five such letters

are conveyed or transmitted by such special messenger (see § 310.3(d)); or

(5) Are carried prior or subsequent to mailing (see § 310.3(e));

##### § 310.3 Exceptions.

(a) *Curio*. The sending or carrying of letters is permissible if they accompany and relate in all substantial respects to some part of the cargo or to the ordering, shipping or delivering of the cargo.

(b) *Letters of the carrier*. (1) The sending or carrying of letters is permissible if they are sent by or addressed to the person carrying them. If the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer, or employee of such person (see § 310.3(b)(2)) and the letters must relate to the current business of such person.

(2) The fact that the individual actually carrying the letters may be an officer or employee of the person sending the letters or to whom the letters are addressed for certain purposes does not necessarily mean that he is an officer or employee for purposes of this exception. The following factors bear on qualifications for the exception: the carrying employee is employed for a substantial time, if not fulltime (letters must not be privately carried by casual employees); the carrying employee carries no matter for other senders; the carrying employee is a regular salaried employee and shares in all privileges enjoyed by other regular employees (including employees not engaged primarily in the letter-carrying function), including but not limited to salary, annual vacation time, absence allowed for illness, health benefits, workmen's compensation insurance, and retirement benefits.

(3) Separately incorporated carriers are separate entities for purposes of this exception, regardless of any subsidiary, ownership, or leasing arrangement. When, however, two concerns jointly operate an enterprise with joint employees and share directly in its revenues and expenses, either of the concerns may carry the letters of the joint enterprise.

(c) *Private hands without compensation*. The sending or carrying of letters without compensation is permitted. Compensation generally consists of a monetary payment for services rendered. Compensation may also consist, however, of non-monetary valuable consideration and of good will. Thus, for example, when a business relationship exists or is sought between the carrier and its user, carriage by the carrier of the user's letters will ordinarily not fall under this exception; or, when a person is engaged in the



transportation of goods or persons for hire, his carrying of letters "free of charge" for customers whom he does charge for the carriage of goods or persons does not fall under this exception.

(d) *Special messenger.* (1) The use of a special messenger employed for the particular occasion only is permissible to transmit letters if not more than twenty-five letters are involved. The permission granted under this exception is restricted to use of messenger service on an infrequent, irregular basis by the sender or addressee of the message.

(2) A special messenger is a person who, at the request of either the sender or the addressee, picks up a letter from the sender's home or place of business and carries it to the addressee's home or place of business, but a messenger or carrier operating regularly between fixed points is not a special messenger.

(e) *Carriage prior or subsequent to mailing.* (1) The private sending or carriage of letters which enter the mail stream at some point between their origin and their destination is permissible. Any point where letters are opened or read is a destination of the letters for purposes of this exception and an origin of the letters for purposes of this exception if letters are transmitted beyond this point. Any point where letters are consolidated or consolidated letters are separated is a destination or origin point rendering this exception inapplicable to the private carriage of the separate letters prior to their consolidation or subsequent to their separation.

(2) Examples of permitted activity are the pickup and carriage of letters which are delivered to post offices for mailing; the pickup and carriage of letters at post offices for delivery to addressees; and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

#### § 310.4 Responsibility of carriers.

Private carriers are cautioned to make sure that their carriage of matter is lawful within the definition, exceptions, suspensions, and conditions contained in this part and in Part 320. They should take reasonable measures to inform their customers of the contents of these regulations so that only proper matter is tendered to them for carriage. Carriers should desist from carrying any matter when the form of shipment, identity of sender or recipient, or any other information reasonably accessible to them indicates that matter tendered to them for carriage is not proper under these regulations.

#### § 310.5 Payment of postage on violation.

(a) Upon discovery of activity made unlawful by the Private Express Statutes, the Postal Service may require any person or persons who engage in, cause, or assist such activity to pay an amount or amounts not exceeding the total postage to which it would have been entitled had it carried the letters between their origin and destination.

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in Part 959 of this chapter. The appeal is limited to determining that the methods used to compute the numbers of letters and the amount payable are correct. The determination of the Inspection Service or of the Law Department that an item is a letter being carried in violation of the Private Express Statutes and regulations is final and binding upon the Judicial Officer Department.

(c) Refusal to pay an unappealed demand or a demand that becomes final after appeal will subject the violator to civil suit by the Postal Service to collect the amount equal to postage.

(d) The payment of amounts equal to postage on violation shall in no way limit other actions to enforce the Private Express Statutes by civil or criminal proceedings.

#### § 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and Part 320 may be obtained by writing the Law Department, U.S. Postal Service, Washington, D.C. 20260. A numbered series of advisory opinions will be available for inspection by the public in the Library of the United States Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

#### § 310.7 Amendment of regulations.

Amendments of the regulations in this part and in Part 320 may be made only in accordance with the rulemaking provisions of the Administrative Procedure Act.

### PART 320—SUSPENSIONS OF THE PRIVATE EXPRESS STATUTES

Sec.

320.1 Definitions.

320.2 Effect of suspensions.

320.3 Revocation or amendment of suspensions.

320.4 Suspension for certain data processing materials.

320.5 Suspension for certain advertisements in parcels.

320.6 Suspension for certain letters of college and university organizations.

320.7 Suspension for certain international ocean-carrier related documents.

AUTHORITY: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699, 1724.

#### § 320.1 Definitions.

The definitions in § 310.1 apply to Part 320 as well.<sup>1</sup>

#### § 320.2 Effect of suspensions.

The effect of these suspensions is to allow any person to send or carry the covered materials between places served by the Postal Service without paying postage or meeting any other conditions of 39 U.S.C. 601(a) and § 310.2(b) of this chapter.

#### 320.3 Revocation or amendment of suspensions.

These suspensions may be revoked or amended in accordance with § 310.7. No revocation of the suspension provided in § 320.4 will curtail operations of particular carriers existing at the time of the revocation to a level of operations (in dollar or volume terms, whichever is larger) lower than that antedating the revocation in a particular market served prior to the revocation. Should the suspension referred to in § 320.4 be revoked, carriers, as a condition to continuing operations under this section, will be required to provide reasonably complete and accurate data to support estimates of past operating levels in particular markets.

#### 320.4 Suspension for certain data processing materials.

(a) The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes for data processing materials defined in paragraph (c) on the terms detailed in paragraph (b), subject to the operating requirements in paragraphs (d) through (g).

(b) The suspension referred to in paragraph (a) of this section is for data processing materials conveyed (1) to a data processing center, if transmission is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (2) back from the data processing center to the address of the office originating the incoming materials, if transmission is completed within 12 hours or by noon of the addressee's next business day, and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center. For pur-

<sup>1</sup>Several of the items enumerated in § 310.1(a)(7) do not self-evidently lie outside of the definition of "letter". To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

poses of the time limitations for completion of delivery referred to in the preceding sentence, delivery of shipments between a domestic point and a foreign point shall be deemed to begin at the time materials of foreign origin are received at the international gateway city or end at the time materials of domestic origin leave the international gateway city. This suspension does not apply to transmissions from or to originating offices that are neither part of the firm owning the data processing center nor data processing customers of the firm owning the data processing center.

For purposes of this suspension, (1) "addressee's next business day" means the first calendar day, stated in his local time, on which he conducts business, following the calendar day of dispatch, stated in the sender's local time; (2) "data processing" means electro-mechanical or electronic processing and includes the recording of data by electro-mechanical or electronic means for further processing; and (3) "data processing materials" means materials of all types that are sent exclusively for data processing and are ready for immediate data processing, but only if they are produced recurrently in the course of the normal business operations of the office originating them or receiving them back from the processing center.

(d) Carriers intending to establish or alter operations based on the suspension granted pursuant to this section shall, as a condition to the right to operate under the suspension, notify the Private Express Liaison Officer, Customer Services Department, United States Postal Service, Washington, D.C. 20260, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the Private Express Liaison Office, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

(e) Carriers operating under the suspension granted pursuant to this section are responsible for making sure that their carriage of matter under the suspension meets all conditions contained in this section. (See § 310.4.) The containers or covers of any matter asserted to be carried under the suspension must be made available for examination upon request by a properly identified postal inspector. The outside of such containers or covers must show the name and address of the sender and the name and address of the addressee. Carrier records—either in the form or notations on the containers or covers of any matter asserted to be carried under the suspension granted pursuant to this section or in the form of records kept by employees of the actual times

they make delivery or pickup stops—must be sufficient to show that the delivery of such matter was completed within the applicable time limitation prescribed in this section. The provisions of this paragraph shall not restrict the Postal Service in the exercise of search powers conferred upon it by law.

(f) The filing of notifications under this section does not relieve the carrier of responsibility for assuring that its operations conform to applicable statutes and regulations.

(g) Failure to comply with the notification requirements of this section and carriage of materials or other action in violation of other provisions of this Part or Part 310 are grounds for administrative revocation of the suspension as to a particular carrier for a period of not less than one year in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter.

(NOTE.—The form referred to in § 320.4(d) is reproduced below.)

#### NOTICE OF INTENT TO ESTABLISH OPERATIONS UNDER SUSPENSION OF THE PRIVATE EXPRESS STATUTES<sup>1</sup>

(See 39 CFR 320.4, Suspension For Certain Data Processing Materials.)

##### Private Carriage of Letters

Name of Carrier \_\_\_\_\_  
Address \_\_\_\_\_  
State of Incorporation \_\_\_\_\_  
Geographical Area to be Served \_\_\_\_\_  
1. Designate the specific markets or areas in which operations will be conducted.  
2. Describe specifically any authorizations issued by local, state, or federal regulatory agencies under which operations will be conducted.

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Name and Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

(NOTE.—False statements contained herein are punishable by law, 18 U.S.C. 1001.)

#### § 320.5 Suspension for certain advertisements in parcels.

The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes for advertisements, not

<sup>1</sup>Information relates exclusively to operations under the suspension for certain data processing materials. This form should be used for an initial notice of operations and for any amendments to the initial or subsequent notices.

marked with the name or address of the intended recipient, enclosed with merchandise in parcels, of goods in the same general line of products as the merchandise shipped that are offered for sale by the shipper or manufacturer of the merchandise, provided the shipment of advertisements is incidental to the shipment of accompanied merchandise. A shipment of advertisements is not incidental to the shipments of accompanied merchandise if the contents or physical characteristics of the advertisements, or the characteristics of the merchandise they accompany (such as, for example, the small value of the merchandise or its status as a sample), suggests that a substantial purpose in shipping the merchandise plus the advertising is advertising. An item is not an advertisement within the meaning of this provision unless its sole purpose is to cause the person to whom it is sent or ultimately distributed to purchase the goods advertised.

#### § 320.6 Suspension for certain letters of college and university organizations.

The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes to permit colleges and universities to carry in their internal mail systems the letters of their bona fide student or faculty organizations to campus destinations. This suspension does not cover the letters of faculty members, students, or organizations other than bona fide student or faculty organizations of the carrying college or university. Colleges and universities choosing to provide their student or faculty organizations access to their internal mail systems are responsible for assuring that only letters of bona fide student or faculty organizations addressed to campus destinations are carried. (See § 310.4.)

#### § 320.7 Suspension for certain international-ocean-carrier-related documents.

The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes for documents, sent by a shipper or an ocean carrier from a foreign origin to a United States ocean-carrier port city destination or from a United States ocean-carrier port city origin to a foreign destination, that would be excepted under § 310.3(a) if the documents accompanied the cargo. This suspension covers only shipments to or from ports where the cargo to which the documents are required to relate is actually loaded on, or unloaded from, an ocean vessel.

[FR Doc. 78-36217 Filed 12-27-78; 8:45 am]



[6560-01-M]

ENVIRONMENTAL PROTECTION  
AGENCY

[40 CFR Part 65]

[FRL 1030-8]

STATE AND FEDERAL ADMINISTRATIVE  
ORDERS PERMITTING A DELAY IN COMPLIANCE  
WITH STATE IMPLEMENTATION PLAN  
REQUIREMENTS

Proposed Approval of an Administrative Order  
Issued By the Connecticut Department of Environmental  
Protection to the Levery & Hurley Co.

AGENCY: Environmental Protection  
Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to the Levery and Hurley Company. The order requires the company to bring air emissions from its asphalt batching plant in Bridgeport, Connecticut into compliance with certain regulations contained in the federally-approved Connecticut State Implementation Plan (SIP) by May 25, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before January 29, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Massachusetts 02203. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

## FOR FURTHER INFORMATION:

Attorney Michael Gurchin at 617/223-5061, or engineer Steven Fradkoff at 617/223-5610, both at the following address: U.S. Environmental Protection Agency, J.F.K. Federal Building, Room 2103, Boston, Massachusetts 02203.

## SUPPLEMENTARY INFORMATION:

The Levery and Hurley Company operates an asphalt batching plant ("number 4") at Bridgeport, Connecticut. The order under consideration addresses emissions from asphalt batching plant number 4, which is subject to Sections 19-508-5(e) and 19-508-18(b)(3)(i) of the Connecticut Regulations for the Abatement of Air Pollution. The regulation limits visible emissions, and is part of the federally approved Connecticut State Implementation Plan. The order requires final compliance with the regulation by May 25, 1979 through installation of a baghouse and subsequent emission testing procedures approved by the Connecticut Department of Environmental Protection.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: December 12, 1978.

REBECCA W. HANMER,  
Acting Regional Administrator,  
Region I.

[FR Doc. 78-36207 Filed 12-27-78; 8:45 am]

[6560-01-M]

[40 CFR Part 180]

[FRL 1030-2; PP 7F19113/P104]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES  
FOR PESTICIDE CHEMICALS IN OR  
ON RAW AGRICULTURAL COMMODITIES

Proposed Tolerances for the Pesticide Chemical  
Metolachlor

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that 40 CFR 180.368 be amended by establishing tolerances for residues of the herbicide metolachlor. The proposal was submitted by Ciba-Geigy Corp. This amendment would establish maximum permissible levels for residues of metolachlor in or on soybeans and in eggs, milk and the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry and sheep.

DATE: Comments must be received on or before January 12, 1979.

ADDRESS: Comments to: Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401 East Tower, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION  
CONTACT:

Ms. Willa Garner, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, EPA (202-755-7012).

SUPPLEMENTARY INFORMATION: On March 1, 1977, notice was given (42 FR 11865) that Ciba-Geigy Corp., P.O. Box 11422, Greensboro, North Carolina 27409, had filed a petition (PP 7F1913) with the EPA. This petition proposed that 40 CFR 180.368 be amended by the establishment of a tolerance for combined residues of the herbicide metolachlor (2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide) and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on the raw agricultural commodity soybeans at 0.1 part per million (ppm).

Ciba-Geigy Corp. subsequently amended the petition by proposing tolerances in eggs, milk and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.02 ppm. Because of the potential increase in exposure of humans to residues as a result of the additional tolerances, the tolerances are being pro-

posed at this time to provide an opportunity for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included a rat acute oral toxicity study with a lethal dose (LD<sub>50</sub>) of 2.78 grams (g)/kilogram (kg) of body weight (bw); a 90-day rat feeding study with a no-observable-effect level (NOEL) of 300 ppm; a rat teratology study which was not fetotoxic or teratogenic at 360 milligrams (mg)/kg bw/day; a three-generation rat reproduction study and audit report with no effects at 30 ppm, 300 ppm, or 1,000 ppm; a mouse carcinogenicity study and audit report with no carcinogenic potential at 30 ppm, 1,000 ppm, or 3,000 ppm; a mouse mutagenic dominant lethal study (negative); and a salmonella/mammalian-microsome mutagenicity study (negative).

Desirable studies or data that are lacking or to be repeated are pathology data from all levels of the 90-day rat feeding study (except the 300 ppm level with a four-week recovery period), pathology data from the 90-day dog feeding study, a two-year rat feeding study with audit report, a mouse carcinogenicity study, and six-month toxicity study in dogs. In a letter of October 25, 1978, the petitioner agreed to perform and/or submit the above studies or data (pathology data from the 90-day dog feeding study on or before February 1, 1979 and the final report for the two-year study on or before March 15, 1979) and not to contest revocation of the egg, meat, milk, poultry, and soybean tolerances after they have been established should the above studies indicate potential adverse effects on man or the environment.

Tolerances have previously been established for residues of metolachlor on corn grain at 0.1 ppm for a theoretical maximal residue contribution (TMRC) of 0.0015 mg/day in a 1.5-kg diet or 0.33 percent of the acceptable daily intake (ADI). The proposed tolerances on soybeans at 0.1 ppm and meat, milk, and dairy products at 0.02 ppm would contribute an additional 0.001 mg/day/1.5-kg diet for a total TMRC of 0.015 mg/day/1.5-kg diet or 3.47 percent of the ADI. Based upon the 300 ppm NOEL in the rat 90-day feeding study and a 2,000-fold safety factor, the ADI has been set at 0.0075 mg/kg bw/day with a maximal permissible intake (MPI) of 0.45 mg/day/60-kg man.

The metabolism of metolachlor in soybeans and in animals is adequately understood, an adequate analytical method (gas chromatography using a Coulson electrolytic conductivity detector for the first mentioned derivative and a Dohrman microcoulometric

detector for the second mentioned derivative) is available for enforcement purposes and the proposed tolerance level of 0.1 ppm is adequate to cover residues of metolachlor and its metabolite on soybeans and their fractions.

The tolerances established by amending 40 CFR 180.368 will be adequate to cover residues that would result in meat, milk, poultry, and eggs as delineated in 40 CFR 180.6(a)(2).

There are no pending regulatory actions against the continued registration of metolachlor. The pesticide is considered useful for the purpose for which tolerances are being sought, and it is concluded that the tolerances of 0.1 ppm in or on soybeans and 0.02 ppm in eggs, milk and the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep will protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before January 12, 1979, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7F1913/P104." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: December 21, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

It is proposed that Part 180, Subpart C, § 180.368 be revised in the introductory paragraph and the table to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

Tolerances are established for combined residues of the herbicide metolachlor (2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methyl-ethyl)acetamide) and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the following raw agricultural commodities:

| Commodity:                 | Parts per million |
|----------------------------|-------------------|
| Cattle, fat.....           | 0.02              |
| Cattle, mbypr.....         | 0.02              |
| Cattle, meat.....          | 0.02              |
| Corn grain (exc. pop)..... | 0.1               |
| Eggs.....                  | 0.02              |
| Goats, fat.....            | 0.02              |
| Goats, mbypr.....          | 0.02              |
| Goats, meat.....           | 0.02              |
| Hogs, fat.....             | 0.02              |
| Hogs, mbypr.....           | 0.02              |
| Hogs, meat.....            | 0.02              |
| Horses, fat.....           | 0.02              |
| Horses, mbypr.....         | 0.02              |
| Horses, meat.....          | 0.02              |
| Milk.....                  | 0.02              |
| Poultry, fat.....          | 0.02              |
| Poultry, mbypr.....        | 0.02              |
| Poultry, meat.....         | 0.02              |
| Sheep, fat.....            | 0.02              |
| Sheep, mbypr.....          | 0.02              |
| Sheep, meat.....           | 0.02              |

[FR Doc. 78-36024 Filed 12-27-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS  
COMMISSION

[47 CFR Part 1]

[Docket No. 19660; RM-690]

INTERNATIONAL RECORD CARRIER'S SCOPE  
OF OPERATIONS IN THE CONTINENTAL  
UNITED STATES, INCLUDING POSSIBLE REVISIONS  
TO THE FORMULA PRESCRIBED  
UNDER SECTION 222 OF THE COMMUNICATIONS  
ACT

Order Extending Time for Filing Petitions To  
Deny and Other Comments and Oppositions  
to These Further Pleadings

AGENCY: Federal Communications  
Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments in a proceeding involving the authorization of additional gateways and Free Direct Access.

DATES: The time to file petitions to deny and other comments is extended until January 8, 1979, and Oppositions to these further pleadings will be due by January 22, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION  
CONTACT:

Helene Bauman, Common Carrier  
Bureau, 202-632-7834.

## SUPPLEMENTARY INFORMATION:

Adopted: December 13, 1978.

Released: December 20, 1978.

Order. In the matter of International Record Carrier's Scope of Operations in the Continental United States, including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act, Docket No. 19660, RM-690.

<sup>1</sup> See 43 FR 57187, December 6, 1978.



1. The Commission is herein considering:

(a) a *Motion to Extend Time* filed by the Western Union Telegraph Company (WUT) on December 4, 1978 requesting an extension of time from December 18, 1978 on January 25, 1979 to respond to the International Record Carriers' (IRCs') comments and related amended applications;

(b) a *Motion for Extension of Time* filed by Trans-lux Corporation (Trans-lux) on December 6, 1978, requesting an extension of time from December 18, 1978 until February 8, 1979 in which to file its petition to deny or other comments in accordance with paragraph 19 of the Commission's Notice of Inquiry and Proposed Rulemaking ("Notice") released in this docket on July 28, 1978 (FCC 78-511).

2. In support of its Motion, WUT states that the IRCs' proposed expansion involves a host of complex issues of law, economics and policy; their applications and pleadings comprise hundreds of pages of argument and data bearing on these issues. WUT further states that it intends to submit studies which involve complex analyses of the voluminous data submitted by the IRCs, as well as of internally generated data bearing on questions raised by the IRC filings. WUT contends that while work on these analyses has begun and is proceeding on a priority basis, it simply cannot be completed until well beyond the December 18 filing date. WUT also points out that the IRCs received two extensions of time and were not required to file pleadings until 14 weeks after the Commission's Notice, but those who wish to comment on the IRC applications and pleadings would be required to do so less than 4 weeks after the last IRC date were filed.

3. Trans-lux stated that since it was not originally a party to Docket No. 19660, it only obtained copies of the voluminous filings by the IRCs on November 11, and November 28, 1978. In order to analyze and comment on these filings, Trans-lux states that it needs additional time. Trans-lux also notes that the IRCs were afforded more than three months in which to furnish amended gateway applications and related data, and claims that under these circumstances, it seems only reasonable also to afford interested parties an additional period (at least comparable to that extended to the IRCs) in which to address these complex and detailed submissions.

4. While we wish to give each party involved in this Docket adequate time to compile the necessary data in order to file its argument, we cannot emphasize enough the need for expeditious action. This Docket has been pending before the Commission for far too long, and it is in the best interests of

all parties for the Commission to reach a carefully considered but speedy resolution of this proceeding. Thus, we will grant all parties some additional time in which to file comments, but not the full time requested in the above-mentioned motions. Accordingly, the time to file petitions to deny and other comments is extended until January 8, 1979, and Oppositions to these further pleadings will be due by January 22, 1979.

FEDERAL COMMUNICATIONS  
COMMISSION,  
JACK D. SMITH,  
*Acting Chief,  
Common Carrier Bureau.*

[FRC Doc. 78-36078 Filed 12-27-78; 8:45 am]

[4910-22-M]

## DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Part 393]

[BMCS Docket No. MC-66; Notice No. 78-13]

### PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Withdrawal of Notice of Proposed Rulemaking

AGENCY: Federal Highway Administration, DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proposal to modify requirements pertaining to the location of clearance and identification lamps on large trucks, buses, semi-trailers, and full trailers.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. D. W. Morrison, Chief, Vehicle Requirements Branch, Bureau of Motor Carrier Safety, 202-426-1700; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, 202-426-0346, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 21, 1977, a Notice of Proposed Rulemaking (NPRM) (42 FR 7171, February 7, 1977) was issued proposing to eliminate mounting height requirements for clearance and identification lamps on motor vehicles operated in interstate or foreign commerce. The present requirements that these lamps indicate the extreme width and height of the vehicles are found in Section 393.20 of the Federal

Motor Carrier Safety Regulations (FMCSR) (49 CFR 393.20).

The National Highway Traffic Safety Administration (NHTSA) of this Department had issued a NPRM on December 2, 1976, (41 FR 52892), to delete rear mounting height requirements for clearance and identification lamps on newly manufactured motor vehicles. The present requirements for these lamps on new motor vehicles are found in Federal Motor Vehicle Safety Standard (FMVSS) No. 108, (49 CFR 571.108). For reasons stated in a companion notice appearing elsewhere in today's FEDERAL REGISTER, NHTSA has decided to terminate its rulemaking proposal with respect to mounting height requirements for clearance and identification lamps (NHTSA Docket No. 76-8). To promote and maintain consistency between the FMCSR and the FMVSS, the Federal Highway Administration has decided to terminate its rulemaking efforts relative to this docket (BMCS Docket No. MC-66).

A total of 14 comments were submitted to the Bureau of Motor Carrier Safety in response to Docket No. MC-66. Comments generally supported the proposal except for 2 lighting equipment manufacturers, 1 government agency, and 1 university research organization. Convincing evidence was not provided by supporters of the proposal that lowering of clearance and identification lamps on commercial motor vehicles would not be detrimental to the interest of highway safety.

In view of the foregoing, BMCS Docket No. MC-66 is hereby terminated.

This termination of proposed rulemaking is issued under the authority of 49 U.S.C. §§ 304 and 1655 and 49 CFR 1.48 and 301.60.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

Issued on: December 19, 1978.

ROBERT A. KAYE,  
*Director, Bureau of  
Motor Carrier Safety.*

[FRC Doc. 78-35828 Filed 12-27-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety  
Administration

[49 CFR Part 571]

[Docket No. 76-8; Notice 2]

### LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Termination of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Termination of rulemaking action.

SUMMARY: This notice terminates a rulemaking proposal to delete the mounting height requirements for clearance and identification lamps on wide motor vehicles, presently specified in Federal Motor Vehicle Safety Standard No. 108, on the basis that insufficient information exists to justify adoption of the proposal.

FOR FURTHER INFORMATION CONTACT:

W. Marx Elliott, Office of Rulemaking (NHTSA), 400 Seventh Street, S.W., Washington, D.C. 20590 (202-246-2720).

### SUPPLEMENTARY INFORMATION:

On December 2, 1976, the agency issued a notice of proposed rulemaking to amend 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, to delete rear mounting height requirements for clearance and identification lamps which are required lighting equipment on vehicles whose overall width exceeds 80 inches (41 FR 52892). The American Trucking Associations Inc. ("ATA") had petitioned for deletion of S4.3.1.4 and any references to mounting height of clearance and identification lamps on trailers, as contained in Table II. ATA argued that the current standard results in anomalies, and that because of the wide variety of body configurations it is impossible to establish a uniformly applicable mounting height requirement for these lamps. It argued further that high lamp placement inhibits safety in inclement weather by depriving the following driver "of the aggregate effect of low-mounted identification and clearance lamps found on almost all trailers except van-type." It also argued that low-mounted lamps are more easily cleaned and likely to be maintained than higher ones, and less of a hazard since use of a ladder is not required to reach them. Another argument advanced by ATA was that the 55 mph speed limit has reduced the differential in speeds between trucks and passenger cars which formerly may have contributed to rear-

end collisions and that therefore the marking function of the lamps has lost its significance.

Upon review of the comments received in response to the proposal, and after consultation with the Bureau of Motor Carrier Safety of the Federal Highway Administration, the agency has determined that insufficient information exists to justify adoption of the proposal as in the interests of motor vehicle safety. Twenty-three comments were received in response to the proposal, in addition to that of ATA. Sixteen supported it, generally truck and trailer manufacturers. The proposal was opposed by the Truck Safety Equipment Institute, the National Transportation Safety Board, and the Florida Department of Highway Safety and Motor Vehicles among others. Those who supported the proposal did so on the basis that it would "help industry" by reducing manufacturing and maintenance costs. Those who opposed it did so primarily on the grounds that high mounted rear lighting is needed and that any change would be detrimental to traffic safety. After consideration of all the comments, the National Highway Traffic Safety Administration has decided that it is in the public interest to retain mounting height requirements to which industry is accustomed and which have provided cues to motorists of the presence of large and frequently slow moving vehicles in the roadway ahead. Accordingly Docket No. 76-8 is being closed and if there is further rulemaking on this subject another opportunity will be offered for comment.

The program official and lawyer principally responsible for this document are W. Marx Elliott and Z. Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 716 (15 U.S.C. 1392, 1907); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 13, 1978.

A. C. MALLIARIS,  
*Acting Associate  
Administrator for Rulemaking.*

[FRC Doc. 78-35827 Filed 12-27-78; 8:45 am]



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amendments to it as well as all other requests in this docket.

2. We order that each air carrier party to the Agreement serve a copy of this order upon each employee organization with which the party bargains collectively as representative of its employees.

We shall publish this order in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.<sup>1</sup>

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36204 Filed 12-27-78; 8:45 am]

#### [6320-01-M]

[Docket 33565; Order 78-12-142]

#### ALLEGHENY AIRLINES, INC.

Application for Amendment of Certificate of Public Convenience and Necessity (Charleston-Parkersburg); Order Granting Exemption and Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of December, 1978.

On September 29, 1978, Allegheny Airlines filed a petition for an order to show cause why its application for amendment of its certificate to remove its one-stop restriction between Charleston, W. Va., and Parkersburg, W. Va.-Marietta, Ohio, should not be granted and requested an exemption, *pendente lite*, to serve the market on a nonstop basis.

In support of the application, it states that it obtained Charleston-Parkersburg authority as a result of its merger with Lake Central, and that the one-stop restriction was a result of the segmentation of the Lake Central system prior to the merger; that the restriction serves no useful purpose; that removal of the restriction will allow it added operational and scheduling flexibility; and that an exemption is warranted to allow it to immediately begin carrying local traffic between these points.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant Allegheny's request for unrestricted nonstop authority in the Charleston-Parkersburg market. Moreover, we find that we should use show-cause procedures here since there are no material, determinative facts that require an oral evidentiary hearing for their resolution.

The Airline Deregulation Act of 1978 places on opponents of requests for new certificate authority the burden of proving that the grant of such requests is not consistent with the public convenience and necessity.<sup>1</sup> No at-

tempt to meet that burden has been made here. Consequently, we proposed to grant Allegheny's request.

Further, we find that it is consistent with the public interest to grant Allegheny an exemption to operate nonstop in the market until 60 days after final decision on its certificate application. It is our established policy to remove operating restrictions unless affirmative reasons are shown for their retention. The removal of the restriction here is unopposed and will make possible more flexible operations for the carrier and competitive nonstop service for travelers in a market that is now a Piedmont Aviation nonstop monopoly.<sup>2</sup>

Allegheny has provided an environmental evaluation. We find that the environment will not be affected at either Charleston or Parkersburg, as the level of service in the market will remain unchanged. Additionally, the carrier is free to add service at either point without our approval. Taking into account these considerations, we find that our actions here do not constitute a major action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, nor are they major actions under the Energy Policy and Conservation Act of 1975.

We will give interested persons 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If a full evidentiary hearing is requested, the objector should state in detail what he would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

#### ACCORDINGLY,

1. We exempt Allegheny Airlines temporarily from the provisions of section 401 of the Act and the terms, conditions, and limitations of its certificate of public convenience and necessity for Route 97 to the extent necessary to permit it to provide nonstop service between Charleston, W. Va., and Parkersburg, W. Va.-Marietta, Ohio;

2. We make the authority granted in paragraph 1 effective on the date of

<sup>1</sup> The only basis for the restriction appears to be the segmentation which existed in Lake Central Airlines' certificate prior to its merger with Allegheny.

service of this order and it shall continue until 60 days after the final decision on Allegheny's certificate amendment request;

3. We may amend or revoke the exemption authority granted in this order at any time in the discretion of the Board without a hearing;

4. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here and amending Allegheny's certificate for Route 97 so as to remove its one-stop restriction in the Charleston-Parkersburg/Marietta Market;

5. We require any interested persons having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth here to file with us, no later than January 22, 1979, and serve upon all persons included in paragraph 8 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the objections, answers to objections shall be filed by February 1, 1979;

6. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before further action is taken;

7. If no one files objections to any part of this order, we will consider all further procedural steps relating to such part or parts waived, and the case submitted to us for further action; and

8. We will serve a copy of this order upon all persons named in the service list of Docket 33565.

We will publish this order in the **FEDERAL REGISTER**.

By the Civil Aeronautics Board.<sup>3</sup>

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36203 Filed 12-27-78; 8:45 am]

#### [6320-01-M]

[Docket 23080-2; Order 78-12-137]

#### PRIORITY AND NONPRIORITY DOMESTIC SERVICE MAIL RATES—PHASE II

#### Order Establishing Final Service Mail Rates

Issued under delegated authority December 20, 1978.

Order 78-12-52, adopted by the Board on December 7, 1978, directed all interested persons to show cause why the service mail rates established by Order 78-11-80, served November 21, 1978, should not apply to mail transport services performed by Cochise Airlines, Inc. and Sky West Aviation, Inc.

The time designated for filing of objection has expired and none was filed. All persons have therefore waived the right to a hearing and all other procedural steps short of fixing a final rate.

<sup>3</sup> All Members concurred.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, the Board's Procedural Regulations, 14 CFR Part 302, and the authority delegated by the Board in its Organizational Regulations, 14 CFR 385.16(g),

1. We make final the tentative findings and conclusions set forth in Order 78-12-52;

2. The fair and reasonable rates of compensation the Postmaster General shall pay for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, to Cochise Airlines, Inc. and Sky West Aviation, Inc. on and after the date of commencement of certificated air transportation are the rates established in Docket 23080-2;

3. The Postmaster General shall pay all service mail rates fixed herein in their entirety; and

4. We shall serve a copy of this order upon the Postmaster General, Cochise Airlines, Inc. and Sky West Aviation, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service date of this order.

We shall make this order effective and an action of the Civil Aeronautics Board upon expiration of the above period unless a petition for review is filed or the Board decides to review this order on its own motion within such period.

We shall publish this order in the **FEDERAL REGISTER**.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36205 Filed 12-28-78; 8:45 am]

#### [6320-01-M]

#### WTC AIRLINES, INC.

#### Application for an All-Cargo Air Service Certificate

DECEMBER 19, 1978.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 34008, from WTC Airlines, Inc. of Los Angeles, Calif., for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application by January 18, 1979. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the

reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36202 Filed 12-27-78; 8:45 am]

#### [3510-26-M]

#### DEPARTMENT OF COMMERCE

#### Office of Federal Statistical Policy and Standards

#### STANDARD INDUSTRIAL CLASSIFICATION

#### Proposed Revision Procedures and Principles for Revision

AGENCY: Office of Federal Statistical Policy and Standards, Department of Commerce.

ACTION: Notice of Proposed Revised Procedures and Principles for the revision of the Standard Industrial Classification.

SUMMARY: This document proposes changes in the procedures and principles for revision of the Standard Industrial Classification (SIC).

#### INTRODUCTION

The proposed changes are the result of a review of the procedures and principles under which industries are identified for Federal statistical purposes. These definitions must be based on objective procedures and principles formulated so as to identify all industries as consistently as possible. A periodic review is necessary to ensure the objectivity and consistency of the criteria and that relevant data are used.

#### PROPOSED CHANGES

The most significant change from the 1972 procedures and principles is consideration of temporary industries. The Technical Committee may designate temporary industries to provide comparability between the existing and new SIC. At the next SIC revision each temporary industry would be combined with the appropriate industry.

The other significant change is that specialization or coverage requirements will be lower for new industries that are very large and higher for new industries if they are smaller than average size.

ADDRESS: Send comments to: Milo O. Peterson, Chairman, Technical Committee on Industrial Classification, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C.

20230 by February 28, 1979. All comments, materials, questions, etc., in response to this proposal will be available for public inspection during normal business hours, 8:30 a.m. to 5:00 p.m., in Room 200, 2001 "S" Street, N.W., Washington, D.C. The final Procedures and Principles will be published after the comments are considered.

#### FOR FURTHER INFORMATION CONTACT:

Milo Peterson, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 673-7977

NOTE.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order No. 12044.

COURTENAY M. SLATER,  
Chief Economist for the  
Department of Commerce.

PRINCIPLES AND PROCEDURES FOR THE REVIEW AND MAINTENANCE OF THE ESTABLISHMENT STANDARD INDUSTRIAL CLASSIFICATION MANUAL (PROPOSAL)

PREPARED BY THE TECHNICAL COMMITTEE ON INDUSTRIAL CLASSIFICATION<sup>1</sup>

#### A. Purpose and Scope

This SIC was developed for use in the classification of establishments by type of economic activity in which engaged. It is a classification of establishments rather than of companies or legal entities or enterprises, by kinds of business and not by occupations or commodities. It encompasses all economic activity.

The purposes of this SIC are to facilitate the collection, tabulation, presentation, and analysis of data relating to establishments and to promote uniformity and comparability in the presentation of statistical data collected by various agencies of the U.S. Government. It is also used by state agencies, trade associations, private business and other organizations.

The basic purpose and objective of a periodic review is to update the classification so as to make it possible to better reflect statistically the existing industrial structure of the economy. It should provide the means for introducing new industry detail result-

<sup>1</sup> The Technical Committee on Industrial Classification is chaired by the Office of Federal Statistical Policy and Standards. The following agencies are represented on the Committee: Bureau of the Census, Bureau of Domestic Business Development, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Department of Agriculture, Department of Energy, Employment and Training Administration, Environmental Protection Agency, Federal Reserve System, Federal Trade Commission, General Services Administration, Internal Revenue Service, International Trade Commission, Securities and Exchange Commission, Small Business Administration, Social Security Administration.

<sup>2</sup> A separate classification for companies has been established in the 1974 *Enterprise Standard Industrial Classification Manual*.

<sup>1</sup> All Members concurred.  
<sup>2</sup> Section 401(d)(9)(B).



ing from economic growth or technological change, as well as for deleting industries no longer significant.

#### B. Principles for Review of the Classification

In the review of the structure and detail of the 1972 edition of the establishment *SIC Manual* (as amended for 1977), the Technical Committee will be guided by the general principles described below. These principles should also be taken into consideration by others, both within and outside of Government, in the preparation of proposed changes.

(1) *Structure of the classification.* The classification should conform to the actual structure of industry as it is found to exist in the American economy. It does not, therefore, follow any single principle, such as the use of the products, market structure, the nature of the raw materials, etc., neither in its detail nor in its basic structure. It is a general-purpose framework which can have its basic detail rearranged for various analytical purposes.

(2) *Unit of classification.* The SIC is designed to classify the establishments according to the kind of economic activity in which such units are engaged.

An establishment is an economic unit which produces goods or services—for example, a farm, a mine, a factory, a store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity for which an industry code is applicable.

Where a single physical location encompasses two or more distinct and separate economic activities for which different industrial classification codes seem applicable, such activities should be treated as separate establishments and classified in separate industries, provided it is determined that: (1) no one industry description in the Standard Industrial Classification includes such combined activities; (2) the employment in each such economic activity is significant; (3) such activities are not ordinarily associated with one another at common physical locations; and (4) reports can be prepared on the number of employees, their wages and salaries, and other establishment type data.

A kind-of-activity unit is a special type of establishment in that there is no restriction with respect to the geographic area in which the activity of the unit is carried on. The kind-of-activity unit—which applies to activities such as construction, transportation and communication—generally carries on the same kind of activity over a more or less wide geographic area. Frequently separate records relating to such activity for a given portion of the area are not maintained.

An establishment is not necessarily identical with a company or legal entity or enterprise, which may consist of one or more establishments. Also, it is to be distinguished from organizational sub-units or departments within an establishment. Supplemental interpretations of the definition of an establishment are included in the industry descriptions of the Standard Industrial Classification.

The SIC distinguishes between central administrative and auxiliary establishments—which are primarily engaged in providing management, general administrative, and support services for other establishments of the same company or enterprise—and oper-

ating establishments—which produce goods and services primarily for the general public or for establishments owned or controlled by other companies or enterprises.

Activities of the type performed at separate administrative offices and auxiliary establishments are, in fact, normally carried on as an integral part of individual operating establishments. Hence, this type of activity is only partially measured by the statistics on separately reported central administrative offices and auxiliary establishments.

(3) *Basis of classification.* Each establishment is to be classified according to its major activity as defined by the 4-digit industries. Major activity is to be determined by the product or group of products produced or handled, or service rendered. Ideally, the principal product or service should be determined by reference to "value added." In practice, however, it is rarely possible to obtain this information for individual products or services, and it becomes necessary to adopt some other criteria which may be expected to give approximately the same results.

(4) *Economic significance, specialization and coverage.* To be recognized as an industry, each group of establishments must have significance from the standpoint of number of persons employed, volume of business and other economic factors, such as number of establishments, payroll, or value added. These factors are taken into account in determining the economic significance of an industry by relating the totals for the industry to the average for all industries in the same economic division (mining, manufacturing, etc.).

Generally speaking, an existing SIC industry is considered to meet the requirements for economic significance if the average of the factors represents 10 percent or more of the average industry in the same division. A new industry, however, should attain a score of 20 percent or more of the average industry. Thus, for example, based on data from the 1972 Census of Manufactures, the average manufacturing industry has (dollar figures in millions): 711 establishments; 40,000 employees; \$356 payroll; \$785 value added; \$1,667 shipments.

Note that an exception to the principle of economic significance is found in the grouping of establishments into industries described as "not elsewhere classified."

In order that an industry at the most detailed level of classification properly reflect the activity being measured, the output of the establishments in the industry should (1) consist largely of those goods and services defining the industry and (2) account for the bulk of the specified goods and services provided by all establishments.

For manufacturing industries these factors are measured by the primary product specialization and coverage ratios, respectively.

The primary product specialization ratio describes the proportion of product shipments (both primary and secondary) of the industry represented by those products defining the industry. The coverage ratio is the proportion of the products defining the industry shipped by establishments classified in the industry to total shipments of such products by all manufacturing establishments.

\*Other criteria include data on value of production, shipments, sales or receipts, payroll, number of employees, etc.

The minimum ratio for primary product specialization is 82. When applying the specialization test, it is well to remember that an industry may sometimes specialize in only one product (Malt or Beet Sugar). In other instances, establishments in an industry may typically produce and thus specialize in a wide variety of products (as in Meat Packing Plants; Blast Furnaces, Steel Works, and Rolling and Finishing Mills; and Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus). For varying reasons, industries have through the years developed a diverse manner. In such instances it is important, therefore, that the specialization ratios be applied and interpreted in the light of the typical product mix defining the particular industry.

In applying coverage ratio factors, separate criteria are established for industries with "captive" output within and outside the industry as distinguished from industries primarily producing for commercial sale. The minimum coverage ratio for industries producing for commercial sale is 70, whereas the coverage ratio for all other industries is 50, except for industries producing from purchased materials (stage of process classification). The minimum coverage ratio for this latter group of industries (e.g., Blended and Prepared Flour, etc.) is 33. The coverage ratio for industries with significant "captive" counterparts (minimum coverage of 50 per cent) should be computed on the basis of the proportion of total output (shipments for sale, interplant transfers, and production for use within the same establishment) accounted for by the given industry compared with total output in all industries. Examples of such industries are Gray Iron Foundries, Automotive Stampings, and Iron and Steel Forgings.

Separate industries for establishments primarily engaged in activities that are rapidly expanding but which do not meet the quantitative measures in the usual reference statistics also may be established. Such separate industry identification will be based on statistical evidence of current size, growth by a specified time, and on the customary requirements, other than size, for establishing new industries. Proposed industries which meet the criteria only marginally should also show reasonable recent growth or evidence of future growth.

Proposed industries should generally meet all three criteria of economic significance, specialization, and coverage. However, industries which are considerably larger in economic significance than required may be acceptable even if they are slightly low in specialization or coverage. Thus, the specialization or coverage minimum requirement may be reduced by a percentage point for each doubling in economic size of the proposed industry.

#### C. Considerations in Evaluating Proposed Changes

Proposals for new or amended industry definitions (4-digit) as well as for the transfer of existing industries to other Industry Groups (3-digit), Major Groups (2-digit), or Economic Divisions, will be evaluated on the basis of the following considerations.

(1) Proposals for change should be accompanied by detailed statistical justification of adherence to the criteria described in section B above. It is recognized that exact data will not always be available nevertheless, as much evidence as possible should be

provided to justify a change. Changes that would cross 3-digit and 2-digit SIC lines require stronger justification than those that would be confined within an existing 3-digit Industry Group. Here, especially, the alteration in the size and composition of the Industry Group from which the products or services would be taken must be ascertained and the proposed revision should strengthen or clarify and not weaken the existing groups. Modifications crossing industry division lines, such as from manufacturing to nonmanufacturing, would call for even more careful consideration.

(2) In proposing new industries, it is essential to recognize the effect of the amendments on existing industries and on the continuity of statistical series. A significant weakening of a statistically sound existing industry or series would be an argument against constituting a new category. The position paper submitted by the proponent for a change must deal with the consequences on the industries affected. Each establishment is currently classifiable in some industry. The subdivision of an existing industry into two or more qualifying industries would permit the development of statistics comparable with the past and would, therefore, receive more favorable consideration. In order to permit historical comparability to the current SIC, the Technical Committee may transfer activities or industries across Group lines and maintain them within their new Group as temporary separate industries, even though they may not meet the criteria for size, specialization, or coverage. Each temporary industry will be combined with another industry in the new Group when the SIC is next revised.

(3) Proposed amendments will be evaluated on the basis of costs, in terms of time and money to government agencies, business and other users of the classification, incurred in changing current records and for collection of new data necessary for the revised code determination; and effect of change in terms of burden on respondent, or availability of information in respondent records.

(4) Proposed new industries will be evaluated on the basis of data from the most current Economic Census and other appropriate sources relevant to the criteria followed in establishing new industries.

(5) The Technical Committee will take cognizance of the International Standard Industrial Classification (ISIC) insofar as comparability with the United States establishment SIC is affected by proposed revisions.

(6) Proposed industries must contain a sufficient number of establishments so that agencies will be able to publish data within the constriction of not revealing the operations of individual producers.

(7) Consideration will be given to the capability for assessing the impact of international trade on proposed industries.

#### D. Clarification and Interpretation of Industry Definitions

Proposed amendments in present industry definitions having no effect on the scope of industrial activity included but designed to improve interpretations of the industry, as well as all proposed new index items and amendments in present index items, will be processed by the Subcommittee on Code Assignment and Interpretation.

#### E. Time Schedule

All proposed amendments to the 1972/1977 edition of the establishment *SIC Manual* should be submitted to the Chairman of the Technical Committee on Industrial Classification at the Office of Federal Statistical Policy and Standards, Department of Commerce, Washington, D.C., 20230, as soon as possible, but by no later than March 30, 1980, to permit transmittal of Technical Committee recommendations to the Office of Federal Statistical Policy and Standards by January 1, 1981. The revised edition of the classification will be effective on January 1, 1982.

#### F. Public Review Procedure

All amendments to the 1972/1977 edition of the establishment *SIC Manual* recommended by the Technical Committee will be made available for public review and comment prior to final action by the Committee. Those making proposals will be notified directly of actions taken; others will be advised through the *Federal Register*. Notice will probably be issued in January, 1981. A 60-day period will be allowed for appeals to actions proposed by the Technical Committee.

[FR Doc. 78-36122 Filed 12-27-78; 8:45 am]

#### [3510-25-M]

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### ANNOUNCING IMPORT RESTRAINT LEVELS FOR CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS FROM THE REPUBLIC OF CHINA

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products from the Republic of China during the twelve-month period beginning on January 1, 1979, pursuant to the bilateral agreement.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, between the Governments of the United States and the Republic of China establishes levels of restraint for cotton, wool and man-made fiber textile products in Categories 313, 331, 333/334/335, 338/339, 340, 341, 347/348, 434, 440, 445/446, 602, 631, 633/634/635, 638, 639, 640, 641, 643/644, 645/646, 647, 648, 659 (pt.) and 669 (pt.), produced or manufactured in the Republic of China and exported to the United States during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979. Accordingly, in the letter of published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to limit imports for consumption, or withdrawals from warehouse for consumption, of cotton, wool and man-made fiber textile products from the Republic of China in the following categories, in excess of the indicated twelve-month levels of restraint:

ucts in the foregoing categories to the designated amounts. The levels of restraint for Categories 638 and 645/646 have been adjusted to reflect carryforward used during the agreement year that began on January 1, 1978. The levels of restraint for Categories 331, 338/339, 633/634/635, 639, and 643/644 have been adjusted to reflect charges for overshipments during the agreement period which began on January 1, 1977, as agreed in consultations between the two governments.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the *FEDERAL REGISTER* on January 4, 1978 (43 F.R. 864), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20203 (202-377-5423).

EDWARD GOTTFRIED, Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE, THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE, Washington, D.C. December 22, 1978.

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS, Department of the Treasury, Washington, D.C. 20229

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products, from the Republic of China in the following categories, in excess of the indicated twelve-month levels of restraint:

#### CATEGORY AND TWELVE-MONTH LEVEL OF RESTRAINT

313 41,144,338 square yards.



331 422,526 dozen pairs.  
 333/334/335 94,920 dozen of which not more than 49,711 dozen shall be in Cat. 333/334 and not more than 59,447 dozen shall be in Cat. 335.  
 338/339 446,508 dozen.  
 340 601,518 dozen.  
 341 348,442 dozen.  
 347/348 785,346 dozen of which not more than 385,709 dozen shall be in Cat. 347 and not more than 595,973 dozen shall be in Cat. 348.  
 434 29,926 dozen.  
 440 13,053 dozen.  
 445/446 122,570 dozen.  
 602 86,207 pounds.  
 631 2,109,286 dozen pairs.  
 633/634/635 1,238,972 dozen of which not more than 837,878 dozen shall be in Cat. 633/634 and not more than 599,826 dozen shall be in Cat. 635.  
 638 1,336,655 dozen.  
 639 4,889,523 dozen.  
 640 3,006,961 dozen.  
 641 620,097 dozen.  
 643/644 127,825 dozen of which not more than 70,185 dozen shall be in Cat. 643 and not more than 70,914 dozen shall be in Cat. 644.  
 645/646 3,497,948 dozen.  
 647 1,762,538 dozen.  
 648 2,940,200 dozen.  
 659 (only T.S.U.S.A. No. 703.1000) 115,384 pounds.  
 669 (only T.S.U.S.A. No. 355.4560) 80,609 pounds.

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 602, 659 (pt.), and 669 (pt.), produced or manufactured in the Republic of China, which have been exported to the United States prior to January 1, 1979, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 602, 659 (pt.), and 669 (pt.) which have been exported before January 1, 1979 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 8, 1978, as amended, between the Governments of the United States and the Republic of China, which provide, in part, that: (1) within the aggregate and group limits specific ceilings may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,  
*Acting Chairman, Committee for  
 the Implementation of Textile  
 Agreements.*

[FR Doc. 78-36184 Filed 12-27-78; 8:45 am]

[3510-25-M]

#### ADJUSTING THE IMPORT RESTRAINT LEVELS FOR CERTAIN MAN-MADE FIBER APPAREL PRODUCTS FROM THE REPUBLIC OF KOREA

DECEMBER 21, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Restoring a portion of carryforward yardage (39,825 dozen), previously deducted from the level of restraint established for man-made fiber knit shirts and blouses in Category 638/639, produced or manufactured in the Republic of Korea, bringing the level to 5,281,079 dozen during the twelve-month period which began on January 1, 1978.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's levels and deducting those amounts from the levels in the succeeding year. It has been determined in technical consultations between representatives of the two governments that excessive charges amounting to 39,825 dozen were made in the previous agreement year, to the Category ceiling comparable to Category 638/639 causing the Government

of the Republic of Korea to request application of more carryforward yardage than needed to cover projected shipments. Action is being taken, therefore, to restore this portion of the carryforward, the total amount of which was deducted previously.

EFFECTIVE DATE: December 21, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

#### SUPPLEMENTARY INFORMATION:

On November 7, 1978, there was published in the FEDERAL REGISTER (43 FR 51830) a letter dated November 2, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which deducted carryforward yardage applied to textile products in various categories, including Category 638/639, produced or manufactured in the Republic of Korea.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements amends the directive of November 2, 1978, directing the Commissioner of Customs to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of textile products in Category 638/639 in excess of an adjusted level of restraint of 5,281,079 dozen during the agreement year which began on January 1, 1978 and extends through December 31, 1978.

ARTHUR GAREL,  
*Acting Chairman, Committee for  
 the Implementation of Textile  
 Agreements.*

COMMITTEE FOR THE IMPLEMENTATION OF  
 TEXTILE AGREEMENTS

DECEMBER 21, 1978.

COMMISSIONER OF CUSTOMS,  
 Department of the Treasury,  
 Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of November 2, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to adjust the levels of restraint established for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are di-

rected further to amend, effective on December 21, 1978, the adjusted twelve-month level of restraint established in the directive of November 2, 1978 for Category 638/639 to the following:

Category Amended 12-Month Level of Restraint  
 638/639 5,281,079 dozen

The level of restraint has not been adjusted to reflect any imports after December 31, 1977.

The action taken with respect to the Government of the Republic of Korea and with respect to imports of man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,  
*Acting Chairman, Committee for the  
 Implementation of Textile Agree-  
 ments.*

[FR Doc. 78-36062 Filed 12-28-78; 8:45 am]

[3510-25-M]

#### ANNOUNCING IMPORT RESTRAINT LEVEL FOR CERTAIN MAN-MADE FIBER YARN FROM THE UNION OF SOUTH AFRICA

DECEMBER 21, 1978.

Under the terms of Article 3.6 of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, the Government of the United States has informed the Government of the Union of South Africa that, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, imports of man-made fiber yarn in Category 604 (only T.S.U.S.A. 310.5049) will be limited to 1,866,000 pounds.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that, effective on January 1, 1979 and extending through December 31, 1979, entry and withdrawal from warehouse for consumption in the United States of man-made fiber yarn in Category 604 (only T.S.U.S.A. 310.5049), produced or manufactured in the Union of South Africa and exported to the United States during that twelve-month period, shall be limited to 1,866,000 pounds.

ARTHUR GAREL,  
*Acting Chairman, Committee for  
 the Implementation of Textile  
 Agreements.*

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

DECEMBER 21, 1978.

COMMISSIONER OF CUSTOMS,  
 Department of the Treasury,  
 Washington, D.C. 20229

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604 (only T.S.U.S.A. 310.5049), produced or manufactured in the Union of South Africa, in excess of 1,866,000 pounds.

Man-Made fiber textile products in Category 604 (only T.S.U.S.A. 310.5049) which have been exported to the United States before January 1, 1979 shall not be subject to this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Union of South Africa and with respect to imports of man-made fiber textile products from the Union of South Africa have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,  
*Acting Chairman, Committee for the  
 Implementation of Textile Agree-  
 ments.*

[FR Doc. 78-36061 Filed 12-27-78; 8:45 am]

[6355-01-M]

#### CONSUMER PRODUCT SAFETY COMMISSION.

[CPSC Docket No. 78-6]

#### CONSUMER PRODUCT SAFETY ACT

##### Publication of Complaint

Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR 1025), the Commission must publish in the FEDERAL REGISTER Complaints which it issues under the Poison Prevention Packaging Act.

Printed below is a Complaint in the matter of The Ronson Corporation and Louis V. Aronson II, individually and President of Ronson Corporation.

In the matter of RONSON CORPORATION, a corporation, One Ronson Road, Bridgewater, New Jersey 08807 and LOUIS V. ARONSON, II, individually and as President of Ronson Corporation.

[CPSC Docket No. 78-6]

#### COMPLAINT

##### NATURE OF THE ACTION

1. This is an action pursuant to section 4(c) of the Poison Prevention Packaging Act of 1970 (hereinafter "PPPA"), 15 U.S.C. 1473(c), to provide to Respondents Ronson Corporation, a corporation, and Louis V. Aronson, II, individually and as President of Ronson Corporation, (hereinafter "Respondents") an opportunity for a hearing on the matter of whether or not the Consumer Product Safety Commission (hereinafter "Commission") should issue an order to require that cigarette lighter fuel manufactured by Respondents and designated as "Ronsonol Lighter Fluid", be packaged exclusively in "special packaging," as that term is defined in section 2(4) of the PPPA, 15 U.S.C. 1471(4).

2. The Commission has determined, pursuant to section 3 of the PPPA, 15 U.S.C. 1472, that the degree or nature of the hazard to children in the availability of cigarette lighter fuel by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting of cigarette lighter fuel, and, accordingly, has established a standard for special packaging for such substances at 16 CFR 1700.14(a)(7). Respondent's "Ronsonol Lighter Fluid" cigarette lighter fuel is subject to that standard.

3. For the purpose of making any household substance which is subject to a special standard established under section 3 of the PPPA, 15 U.S.C. 1472, readily available to the elderly or handicapped unable to use such substance when packaged in conformance with the applicable standard, section 4(a) of the PPPA, 15 U.S.C. 1473(a) authorizes a manufacturer or packer to market a single size of the substance in packaging which does not comply with the standard. In those instances where a manufacturer or packer of such household substance requiring special packaging does market a single noncomplying package of the substance, the Commission has authority under section 4(c) of the PPPA, 15 U.S.C. 1473(c), to order that the household substance be packaged exclusively in special packaging if the Commission finds that the manufacturer (or packer) is not supplying the product in popular size packages which comply with the applicable standard.



4. The PPPA and its legislative history indicate Congress intended that distribution in "special packaging" would be the general marketing practice for products subject to regulation and that the noncomplying exemption authorized under section 4(a) of the PPPA, 15 U.S.C. 1473(a), would be used only to supply a sufficient amount of noncomplying packaged units to satisfy the demands of the elderly and handicapped.

#### JURISDICTION

5. Jurisdiction of this matter rests on sections 3 and 4(c) of the PPPA, 15 U.S.C. 1472 and 1473(c), 16 CFR 1700.14(a)(7), and section 30(a) of the Consumer Product Safety Act (hereinafter "CPSA"), 15 U.S.C. 2079(a).

#### THE PARTIES

6. The staff of the Commission, employed pursuant to section 4(g)(2) of the CPSA, 15 U.S.C. 2053(g)(2), as being necessary in the execution of the Commission's functions, is responsible, *inter alia*, for bringing to the attention of the Commission those matters which relate to administration and enforcement of the PPPA.

7. Respondent Ronson Corporation is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at One Ronson Road, Bridgewater, New Jersey 08807.

8. Respondent Louis V. Aronson, II is President of Ronson Corporation and as such is primarily responsible for the acts, practices and policies, including packaging of products, of Respondent Ronson Corporation.

9. Whenever this complaint refers to any act of Respondents, the reference be deemed to mean that the directors, officers, employees, agents, or representatives of the Respondent Ronson Corporation did authorize such act while actively engaged in the management, direction, or control of the affairs of the Respondent Ronson Corporation and while acting within the scope of their employment.

#### FACTUAL ALLEGATIONS

10. Respondents package Ronsonol Lighter Fluid, which is a product requiring special packaging under 16 CFR 1700.14(a)(7), in 4½, 7 and 12 ounce packages. The 7 and 12 ounce sizes bear child-resistant closures which appear to comply with the special packaging standards. The 4½ ounce size is marketed in noncomplying packages for use by the elderly and handicapped as an exempt size under section 4(a) of the PPPA, 15 U.S.C. 1473(a). The 4½ ounce noncomplying size amounts to at least 60-65% of Respondents' production of Ronsonol Lighter Fluid.

11. Statistical data derived from the Bureau of the Census, U.S. Department of Commerce, indicates that, at an extreme maximum, no more than 33% of the United States of the United States population would have occasion to seek a noncomplying size of a general use regulated product such as cigarette lighter fuel.

12. On or about September 30, 1977, the Commission staff sent a letter to Respondents offering them the opportunity to submit, in writing within 15 days, the steps which Respondents intended to initiate to bring Ronsonol Lighter Fluid into compliance with the purposes of the section 4(a) exemption.

13. On or about November 8, 1977, Respondents, through counsel, responded to the Commission staff's letter, alleging that Respondent Ronson Corporation "has complied not only with the letter of the statute [PPPA] and the regulations, but also with the spirit of these as well as with the intentions of Congress . . . ."

#### PROPOSED COMMISSION ACTION

14. Based upon the applicable provisions of law and the factual allegations of the Commission staff, as well as Respondents' admission that 60-65% of the total volume of production of Ronsonol Lighter Fluid is packaged in noncomplying packaging, the Commission hereby will afford Respondents the opportunity to be heard in a full evidentiary hearing on the record on the issue of whether or not the Commission should issue an order, substantially in the format of Exhibit A hereto, to require the exclusive use of "special packaging", as defined in 15 U.S.C. 1471(4), for Respondents' cigarette lighter fuel including that designated as Ronsonol Lighter Fluid, as necessary to accomplish the purposes of the PPPA, by the authority contained in 15 U.S.C. 1473(c) and 16 CFR Part 1700.

15. If Respondents desire to be heard, Respondents, as well as the Commission staff, shall, for the purposes of such hearing (including the filing of an answer to the complaint by Respondents) be subject to the procedural requirements set forth in the Interim Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025 (42 FR 31431 (June 21, 1977)), and the presiding officer for such hearing shall be an Administrative Law Judge designated by the Commission.

By the Commission.

SADYE E. DUNN,  
Acting Secretary, Consumer  
Product Safety Commission.

DECEMBER 18, 1978.

[FR Doc. 78-36129 Filed 12-27-78; 8:45 am]

[6450-01-M]

#### DEPARTMENT OF ENERGY

##### POWER MARKETING RATES

##### Delegation Order for Confirmation and Approval

AGENCY: Department of Energy.

ACTION: Notice of delegation order.

SUMMARY: The Secretary of Energy has delegated to the Assistant Secretary for Resource Applications the authority to develop, acting by and through the administrators, and to confirm, approve and place in effect on an interim basis, power and transmission rates for the five power marketing administrations; and to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove such rates. Refunds are authorized if rates finally approved are lower than rates approved on an interim basis.

DATES: The order is effective January 1, 1979.

SUPPLEMENTAL INFORMATION: The order replaces Delegation Order No. 0204-4 (October 1, 1977) which gave certain authority to confirm and approve or to establish rates to the Economic Regulatory Administration.

FOR FURTHER INFORMATION CONTACT:

Richard K. Pelz, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-633-9341.

Issued in Washington, D.C., December 22, 1978.

GEORGE S. McISAAC,  
Assistant Secretary for  
Resource Applications.

#### DEPARTMENT OF ENERGY

[Delegation Order No. 0204-33]

TO THE ASSISTANT SECRETARY FOR RESOURCE APPLICATIONS AND TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as Secretary of Energy and by Sections 203(a), 301(b), 302(a), 402(e), 641, 642, 643 and 644 of the Department of Energy Organization Act (Pub. L. 95-91):

1. There is hereby delegated to the Assistant Secretary for Resource Applications the authority to develop, acting by and through the administrators, power and transmission rates for the power marketing administrations, and the authority to confirm, approve, and place in effect such rates on an interim basis, for such period or periods as he may provide, subject to refund with interest as determined by the Federal Energy Regulatory Commission in accordance with Section 3 hereof. No rate developed by the Assistant Secretary shall become effective on a final basis unless and until such rate is confirmed and approved by the Federal

Energy Regulatory Commission acting under Section 2 hereof.

2. There is hereby delegated and assigned to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis, or to disapprove, rates developed by the Assistant Secretary under Section 1, and to exercise the cost allocation authority contained in Section 7 of the Bonneville Project Act and Section 2 of the River and Harbor Act of 1945, 59 Stat. 10, 21, 22.

3. In the event a rate developed by the Assistant Secretary is disapproved by the FERC, the Assistant Secretary shall within 120 days of such additional time periods as the FERC may provide, develop and submit to the FERC a substitute rate for action by the FERC under Section 2 hereof. A rate confirmed and approved by the Assistant Secretary on an interim basis that is disapproved by the FERC shall remain in effect, as provided by the Assistant Secretary, until a substitute rate is confirmed and approved on a final basis by the FERC. Provided, That if the Assistant Secretary does not file a substitute rate within 120 days or such greater time as the FERC may provide, and if the rate has been disapproved because the FERC determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the FERC and revenues collected in excess of such rate during the interim period will be refunded with interest to the extent determined by the FERC. If a substitute rate confirmed and approved on a final basis by the FERC is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the FERC. If a substitute rate confirmed and approved on a final basis by the FERC is higher than the rate in effect on an interim basis, such rate shall become effective on a subsequent date set by the FERC. If at any time it is determined by the FERC that the administrative cost of a refund would outweigh the amount to be refunded, no refund will be required.

4. For purposes of this order—

(a) "Administrator" means the Administrator of a power marketing administration.

(b) "Power marketing administration" means the Alaska Power Administration, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

5. This order is effective January 1, 1979.

Issue at Washington, D.C., December 21, 1978.

JAMES R. SCHLESINGER,  
Secretary of Energy.

[FR Doc. 78-36186 Filed 12-27-78; 8:45 am]

[6450-01-M]

#### WESTERN NEW YORK NUCLEAR SERVICE CENTER, WEST VALLEY STUDY

##### Public Hearing; Announcement of Location

The Department of Energy hereby gives notice that a public hearing will be held for the purpose of receiving public comment on its final report concerning the disposition of the nuclear facilities at the Western New York Nuclear Service Center in West Valley, New York.

The hearing will be held from 9:00 a.m. on Saturday, January 13, 1979 in the Auditorium of the Buffalo and Erie County Public Library, Northwest corner of the Clinton and Ellicott Street intersection off Lafayette Square in downtown Buffalo.

Persons wishing to present oral comments should write to the DOE regional office at the address below in order to be assigned a scheduled time.

Persons wishing to submit written comments in advance of the hearing may send them to the address below. Written comments will also be accepted at the hearing on January 13.

To be scheduled to speak, to submit written comments prior to the hearing, or to obtain a copy of the report, write to:

Robert A. Low, Regional Representative, U.S. Department of Energy (Mail Code WV), 26 Federal Plaza, New York, N.Y. 10007.

After January 13, 1979, and no later than February 16, 1979, written comments may also be submitted to:

Dr. Goetz K. Oertel, Acting Director, Division of Nuclear Products, Office of Nuclear Waste Management, U.S. Department of Energy, Mail Station B-107, Washington, D.C. 20545.

Issued this day December 22, 1978, in Washington, D.C.

PHILLIP S. HUGHES,  
Assistant Secretary, Intergovernmental and Institutional Relations.

[FR Doc. 78-36126 Filed 12-27-78; 8:45 am]

[6740-02-M]

#### Federal Energy Regulatory Commission

[Docket Nos. G-4756, et al.]

##### AMOCO PRODUCTION CO., ET AL.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates<sup>1</sup>  
DECEMBER 15, 1978.

Take notice that each of the Applicants listed herein has filed an appli-

<sup>1</sup>This notice does not provide for consolidation for hearing of the several matters covered herein.

cation or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.



| Docket No. and Date Filed              | Applicant                                                                                    | Purchaser and location                                                                                                                                               | Price Per Mcf                                                | Pressure base |
|----------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|---------------|
| G-4756 Nov. 16, 1978                   | Amoco Production Co., P.O. Box 50870, New Orleans, La. 70150.                                | Hassie Hunt Trust, certain acreage in the Northeast Lisbon Field, Claiborne Parish, La.                                                                              |                                                              |               |
| CI70-54 Dec. 4, 1978                   | Transocean Oil, Inc., 1700 First City East Bldg., Houston, Tex. 77002.                       | Transcontinental Gas Pipe Line Corp., Block 100 field (block 105), Eugene Island Area, Offshore Louisiana.                                                           | 15.025                                                       |               |
| CI75-495 Nov. 26, 1978                 | Monsanto Co., (operator), et al., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77056. | Colorado Interstate Gas Co. Inc., Madden Deep Unit, Fremont and Natrona Counties, Wyo.                                                                               |                                                              |               |
| CI75-543 Nov. 26, 1978                 | Monsanto Co., (operator), et al.                                                             | Kansas-Nebraska Natural Gas Co., Inc., Madden Deep Unit, Fremont and Natrona Counties, Wyo.                                                                          |                                                              |               |
| CI79-134 (A) Nov. 14, 1978             | Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.                                         | Texas Gas Transmission Corp., B. R. Barish No. 1, Johnson Branch Field, Caddo Parish, La., (limited to the Cotton Valley Formation and the Proration Unit therefor). | (*)                                                          | 15.025        |
| CI79-145 (A) Nov. 22, 1978             | Hamilton Brothers Oil Co., Suite 2600, 1606 Broadway, Denver, Colo. 80202.                   | Northern Natural Gas Co., North Sharon field, Woodward County, Okla.                                                                                                 | (*)                                                          | 14.65         |
| CI79-146 (A) Nov. 16, 1978             | Ladd Petroleum Corp., 830 Denver Club Bldg., Denver, Colo. 80202.                            | El Paso Natural Gas Co., Astec No. 3-35 Well, Harper Hill Field, San Juan County, N. Mex.                                                                            | (*)                                                          | 14.73         |
| CI79-147 (A) Nov. 20, 1978             | Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.                                             | Transwestern Pipeline Co., Mammoth Creek Field, Lipscomb County, Tex.                                                                                                | (*)                                                          | 14.65         |
| CI79-148 (A) Nov. 20, 1978             | Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.                       | Northern Natural Gas Co., West Cameron Area, blocks 343 and 352 field, Federal Offshore Louisiana.                                                                   | (*)                                                          | 14.73         |
| CI79-149 (CI61-1557) (B) Nov. 17, 1978 | Ladd Petroleum Corp., (succ. to LVO Corp.), (formerly Livingston Oil Co.).                   | Oklahoma Natural Gas Gathering Corp. and Pioneer Gas Products Co., Ringwood Field, Major County, Okla.                                                               | (*)                                                          |               |
| CI79-150 (B) Nov. 17, 1978             | John B. Hawley, Jr. Trust No. 1, 1915-57th Avenue North, Minneapolis, Minn. 55430.           | Northern Natural Gas Co., Hugoton, Stevens County, Kans.                                                                                                             | (*)                                                          |               |
| CI79-151 (E) Nov. 22, 1978             | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.) P.O. Box 2100, Houston, Tex. 77001.   | Equitable Gas Co., certain acreage located in the Vadis Field, Gilmer County, W. Va.                                                                                 | (*)                                                          | 14.65         |
| CI79-152 (E) Nov. 22, 1978             | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                      | Transwestern Pipeline Co., certain acreage located in the Kermit and Kermit South Fields, Winkler County, Tex., Baird Unit No. 2.                                    | (*)                                                          | 14.65         |
| CI79-153 (A) Nov. 22, 1978             | Gulf Oil Corp.                                                                               | Northern Natural Gas Co., Seeley well No. A-1, Northwest Lovedale Field, Woods County, Okla.                                                                         | (*)                                                          | 14.73         |
| CI79-154 (E) Nov. 22, 1978             | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                      | Transwestern Pipeline Co., certain acreage located in the Kermit and Kermit South Fields, Winkler County, Tex., Baird Unit No. 1.                                    | (*)                                                          | 14.65         |
| CI79-155 (G-8832) (B) Nov. 24, 1978    | Sterling Production Co., 1010 Wilson Bldg., Corpus Christi, Tex. 78476.                      | Trunkline Gas Co., Alfred Field, Jim Wells County, Tex.                                                                                                              | (*)                                                          |               |
| CI79-156 (E) Nov. 24, 1978             | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                      | Equitable Gas Co., certain acreage located in the Vadis Field, Lewis County, W. Va.                                                                                  | (*)                                                          | 14.65         |
| CI79-157 (A) Nov. 21, 1978             | Odessa Natural Corp., (operator), et al., P.O. Box 3908, Odessa, Tex. 79760.                 | El Paso Natural Gas Co., certain acreage located in Rio Arriba County, N. Mex.                                                                                       | (*)                                                          | 14.65         |
| CI79-158 (A) Nov. 27, 1978             | Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.                       | El Paso Natural Gas Co., Otero (Gallup) Field, Rio Arriba County, N. Mex.                                                                                            | (*)                                                          | 14.73         |
| CI79-159 (G-3765) (B) Nov. 20, 1978    | Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.                                   | Columbia Gas Transmission Corp., Midland Field, Acadia Parish, La.                                                                                                   | Depleted and acreage was released unto lessor(s).            |               |
| CI79-160 (A) Nov. 28, 1978             | Ocean Production Co., et al., P.O. Box 61780, New Orleans, La. 70161.                        | Transcontinental Gas Pipe Line Corp., Vermilion block 325, in the Gulf Of Mexico, Offshore Louisiana.                                                                | (*)                                                          | 15.025        |
| CI79-161 (A) Nov. 27, 1978             | Odessa Natural Corp., (operator), et al.                                                     | El Paso Natural Gas Co., Basin Dakota Pool, San Juan County, N. Mex.                                                                                                 | (*) (*)                                                      | 14.73         |
| CI79-162 (E) Nov. 27, 1978             | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.) P.O. Box 2100, Houston, Tex. 77001.   | United Gas Pipe Line Co., certain acreage located in the Bear Creek Field, Bienville Parish, La.                                                                     | (*)                                                          | 15.025        |
| CI79-163 (A) Nov. 27, 1978             | Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.                                             | Southern Natural Gas Co., Kokomo Field, Walthall County, Miss.                                                                                                       | (*)                                                          | 14.73         |
| CI79-164 (A) Dec. 1, 1978              | Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.                                | Tennessee Gas Pipeline Co., OCS-G 2303 Wells 2, 3, and 4, block 287, South Marsh Island, Offshore Louisiana.                                                         | (*)                                                          | 15.025        |
| CI79-165 (B) Dec. 4, 1978              | Southwestern Electric Power Co., P.O. Box 21106, Shreveport, La. 71156.                      | United Gas Pipe Line Co., Bear Creek Field, Bienville Parish, La.                                                                                                    | Well nonproductive, plugged and abandoned on Sept. 29, 1978. |               |
| CI79-166 (E) Dec. 4, 1978              | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                      | Cities Service Gas Co., certain acreage located in the Hardtner Field, Barber County, Kans.                                                                          | (*)                                                          | 14.65         |

| Docket No. and Date Filed | Applicant                                                                               | Purchaser and location                                                                                                         | Price Per Mcf | Pressure base |
|---------------------------|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|
| CI79-167 (E) Dec. 4, 1978 | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                 | Panhandle Eastern Pipe Line Co., certain acreage located in the Nichols Field, Kiowa County, Kans.                             | (*)           | 14.65         |
| CI79-168 (E) Dec. 4, 1978 | Gulf Oil Corp., (succ. in interest to Kewanee Oil Co.).                                 | Northern Natural Gas Co., certain acreage located in the Mocan Northeast Field, Beaver County, Okla.                           | (*)           | 14.65         |
| CI79-169 (A) Dec. 5, 1978 | Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.                            | Transcontinental Gas Pipe Line Corp., South Marsh Island Area, Block 107 Field (Blocks 107 and 114), Offshore Gulf of Mexico.  | (*)           | 14.65         |
| CI79-170 (A) Dec. 4, 1978 | Aminoff USA, Inc., Golden Center One, 2800 North Loop West, Houston, Tex. 77018.        | Natural Gas Pipeline Co. of America, Block A-309 Field, High Island Area, East Addition, South Extension, Offshore Tex.        | (*)           | 14.65         |
| CI79-171 (A) Dec. 6, 1978 | Aminoff Development Inc., Golden Center One, 2800 North Loop West, Houston, Tex. 77018. | Transcontinental Gas Pipe Line Corp., Block 325 of the Block 320 Field, Vermilion Area, Gulf of Mexico.                        | (*)           | 15.025        |
| CI79-172 (A) Dec. 5, 1978 | General American Oil Co. of Texas, Meadows Building, Dallas, Tex. 75206.                | Transcontinental Gas Pipe Line Corp., High Island Area, East Addition and South Extension, block A-283, Field, Gulf of Mexico. | (*)           | 14.73         |

\*Applicant is filing to terminate certificate G-4756 previously issued to it and relate Rate Schedule No. 39 to reflect it is now being covered by certificates issued to Hassie Hunt Trust in Rate Schedules 4 and 37.

\*Applicant is filing under Gas Purchase Contract dated Apr. 15, 1969, amended by amendment dated Nov. 1, 1978 whereby Transcontinental has agreed to amend said contract to revise the deregulation paragraph and include an excess royalty provision.

\*Applicant requests that the certificate be amended to reflect that effective August 1, 1975, Applicant replaced Inexco Oil Co. as operator of the Madden Deep Unit.

\*Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended.

\*Applicant is filing under Gas Purchase Agreement dated Sept. 20, 1978.

\*Applicant is willing to accept a permanent certificate in accordance with Opinion No. 749, as amended.

\*Applicant is willing to accept an initial rate determined in accordance with the Natural Gas Policy Act of 1978, part 271, subpart D, section 104.

\*Purchaser (Oklahoma Natural Gas Gathering Corp.) is unable to economically justify a 2½-mile pipeline connection and has granted a release of the Early No. 1 Well located in Sec. 36-T22N-R12W under Ladd Petroleum Corps. Gas Rate Schedule No. 30.

\*The landowner would like to buy gas from this well to run his motor to pump water for irrigation purposes. The gas would be metered and sold to him at wellhead price to be used only for irrigation purposes.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 15, 1922 as amended.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Mar. 16, 1959 as amended.

\*Applicant is willing to accept a permanent certificate in conformance with section 104 of the Natural Gas Policy Act of 1978.

\*Gatherer Coastal State because of operating system at a loss due to low price and insufficient volume of gas, ceased transporting, compressing and dehydrating gas on Jan. 7, 1977. They have filed for abandonment of their system, Docket No. G-7115, et al. There is no outlet for the very limited volume of gas.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated May 1, 1959, as amended.

\*Applicant is filing under and pursuant to that certain Addendum No. 4 to Gas Purchase Contract dated Sept. 1, 1978.

\*Not used.

\*Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended, escalated as provided in the Natural Gas Policy Act of 1978.

\*Applicant is filing under that certain Addendum No. 3 to Gas Purchase Contract dated Aug. 21, 1978.

\*Applicant and Purchaser are affiliated.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Aug. 13, 1971, as amended.

\*Applicant is willing to accept the rate provided in section 102(b) of the Natural Gas Policy Act of 1978.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Mar. 28, 1955, as amended.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Jan. 30, 1957, as amended.

\*Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 30, 1974, as amended.

\*Applicant is filing for the new natural gas ceiling price, as set forth in section 102 of the Natural Gas Policy Act of 1978.

\*Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770-A, as amended by section 104 of the Natural Gas Policy Act of 1978.

\*Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended, or paragraph (d) of section 102 or section 104 of the Natural Gas Policy Act of 1978 if qualified.

[FR Doc. 78-35754 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-100]

BLUE DOLPHIN PIPE LINE CO.

Notice of Application

DECEMBER 19, 1978.

Take notice that on December 4, 1978, Blue Dolphin Pipe Line Company (Applicant), P.O. Box 2099, Hous-

ton, Texas 77001, filed in Docket No. CP79-100 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1979, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the appli-



cation on file with the Commission and open to public inspection.

The purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation service presently rendered by Applicant for Dow Chemical Company. Total cost of the proposed facilities would not exceed \$10,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36096 Filed 12-27-78; 8:45 am)

# [6740-02-M]

(Docket No. ER79-100)

## CENTRAL HUDSON GAS & ELECTRIC CORP.

### Notice of Filing

DECEMBER 19, 1978.

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on December 11, 1978, tendered for filing as a supplement to its Rate Schedule F.P.C. No. 22 a letter of notification dated November 28, 1978 from Central Hudson to New York State Electric & Gas Corporation. Central Hudson states that this letter provides for an increase in the monthly operation and maintenance charge from \$1,868.80 to \$1,999.62 in accordance with Article IV.2 of its Rate Schedule F.P.C. No. 22.

Central Hudson proposes an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements.

According to Central Hudson copies of this filing have been sent to the New York State Electric & Gas Corporation and the Public Service Commission of New York.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36097 Filed 12-27-78; 8:45 am)

# [6740-02-M]

(Docket No. ER79-101)

## CENTRAL LOUISIANA ELECTRIC CO., INC.

### Notice of Filing

DECEMBER 19, 1978.

Take notice that on December 11, 1978, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing a letter agreement with Cajun Electric Power Cooperative, Inc. (CAJUN) dated December 4, 1978 pursuant to which the parties have agreed that:

1. CLECO consents to the assignment to CAJUN of two Agreements for Electric Service between CLECO

and Southwest Louisiana Electric Membership Corporation (SLEMCO) dated October 2, 1978, (CLECO Rate Schedule FERC No. 30) and October 22, 1975 (CLECO Rate Schedule FERC No. 32);

2. CAJUN will terminate those Agreements; and

3. CLECO will continue to provide service to CAJUN at the delivery points to which those Agreements were applicable in accordance with the Electric System Interconnection Agreement between CAJUN and CLECO dated April 27, 1976 (CLECO Rate Schedule FERC No. 21).

CLECO states that it has estimated that it would have received increased revenues of \$454,235 from service to the delivery points which are the subject of this letter agreement if it had been in effect during 1978.

CLECO requests an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CAJUN, SLEMCO and the Louisiana Public Service Commission, according to CLECO.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before January 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36098 Filed 12-27-78; 8:45 am)

# [6740-02-M]

(Docket No. ER79-103)

## DUKE POWER CO.

### Notice of Application

DECEMBER 19, 1978.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 11, 1978 a supplement to the Company's Electric Power Contract with the City of Greenwood. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FPC No. 250.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increases in contract demand: Delivery Point No. 1 from 10,000 kW to 12,700 kW. Duke Power indicates that this supplement also includes an estimate of sales and revenue for 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

Duke Power proposes an effective date of November 17, 1978, and therefore requests waiver of the Commission's notice requirements.

According to Duke Power copies of this filing were mailed to the City of Greenwood and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36099 Filed 12-27-78; 8:45 am)

# [6740-02-M]

(Docket Nos. CS89-6, et al.)

## FREEPORT OIL COMPANY, A DELAWARE CORP.

Applications for "Small Producer" Certificates:  
DECEMBER 14, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10

<sup>1</sup>This notice does not provide for consolidation for hearing of the several matters covered herein.

days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission in its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

| Docket Number       | Date filed | Applicant                                                                       |
|---------------------|------------|---------------------------------------------------------------------------------|
| CS89-6 <sup>1</sup> | 5/26/78    | Freeport Oil Co., a Delaware corporation, P.O. Box 3038, Midland, Tex. 79702.   |
| CS79-116            | 11/27/78   | James A. Shaw, 946 Oakley Drive, Shreveport, La.                                |
| CS79-117            | 11/27/78   | Zoe H. Shaw, 946 Oakley Drive, Shreveport, La.                                  |
| CS79-118            | 11/27/78   | Marvin L. Smith, P.O. Box 217, Midkiff, Tex. 79755.                             |
| CS79-119            | 11/28/78   | Associated Oil, 1301 9th Street, Apt. No. 3, Vienna, W. Va. 26105.              |
| CS79-120            | 11/30/78   | B H & K Co. and Beren & Co., 800 Fourth Financial Center, Wichita, Kans. 67202. |
| CS79-121            | 11/30/78   | Jan Latham Williams, 3327 Twin Lakes Circle, Jackson, Miss. 39211.              |

| Docket Number | Date filed | Applicant                                                                                      |
|---------------|------------|------------------------------------------------------------------------------------------------|
| CS79-122      | 11/30/78   | D. D. Feldman, d.b.a. D. D. Feldman Oil & Gas, 10934 Bellagio Road, Los Angeles, Calif. 90024. |
| CS79-123      | 11/30/78   | Charles L. Cherry & Associates, Inc., P.O. Box 2627, Littleton, Colo. 80161.                   |
| CS79-124      | 11/30/78   | C. W. Riggs, Inc., Box 358, St. Marys, W. Va. 26301.                                           |
| CS79-125      | 11/29/78   | Sooner Drilling Inc., 412 Fed. Nat. Bank Building, Shawnee, Okla. 74801.                       |
| CS79-126      | 11/28/78   | E. L. Smith III, Two Turtle Creek Village, Suite 1525, Dallas, Tex. 75219.                     |
| CS79-127      | 12/1/78    | A. L. McQuaid d.b.a. Appalachian Mineral Co., Route No. 1, Box 92, Lumberport, W. Va. 26386.   |
| CS79-128      | 12/1/78    | Falcon-Colorado Exploration, Inc., 909, 17th Street, Suite 308, Denver, Colo. 80202.           |
| CS79-129      | 12/4/78    | Dime Box Limited Partnership, P.O. Box 3488, Enid, Okla. 73701.                                |
| CS79-130      | 12/4/78    | W. D. Newsom & Associates, P.O. Box 2145, Bakersfield, Calif. 93303.                           |
| CS79-131      | 12/5/78    | Caribbean Oil & Gas Corp., P.O. Drawer 2879, Lafayette, La. 70502.                             |
| CS79-132      | 12/6/78    | Bowers Oil & Gas Exploration, Inc., P.O. Box 636, Grand Junction, Colo. 81501.                 |
| CS79-133      | 12/9/78    | Great Gulf Corp., P.O. Box 2467, Corpus Christi, Tex. 78403.                                   |
| CS79-134      | 12/11/78   | Julius W. King, P.O. Box 1709, Laurel, Miss. 39440.                                            |
| CS79-135      | 12/11/78   | James E. King, P.O. Box 1709, Laurel, Miss. 39440.                                             |
| CS79-136      | 12/11/78   | Walter L. Ball, P.O. Box 2097, Laurel, Miss. 39440.                                            |
| CS79-137      | 12/11/78   | William N. Rees, P.O. Box 6326, Odessa, Tex. 79762.                                            |
| CS79-138      | 12/11/78   | Quinn Children Trust, P.O. Box 1738, Shreveport, La.                                           |
| CS79-139      | 12/11/78   | Christman Associates, 77 Water Street, New York, N.Y. 10005.                                   |
| CS79-140      | 12/11/78   | M. Golodetz & Co., 666 Fifth Avenue, New York, N.Y. 10019.                                     |
| CS79-141      | 12/11/78   | Trans-Texas Energy, Inc., 12700 Park Central Place, Suite 1202, Dallas, Tex. 75251.            |
| CS79-142      | 12/11/78   | Janice Y. Sullivan, 134 East Topeka, Shreveport, La. 71101.                                    |
| CS79-143      | 12/11/78   | Houston Domestic Oil Co., 1420 Americana Building, Houston, Tex. 77002.                        |
| CS79-144      | 12/7/78    | Barbara E. Stieren, 7515 Shadylane, San Antonio, Tex. 78209.                                   |

<sup>1</sup>Freeport Oil Company, a Delaware Corporation, is requesting that it be substituted for Freeport Oil Company, A Division of Freeport Minerals Company, as the holder of the small producer certificate, due to corporate restructuring.  
(FR Doc. 78-35755 Filed 12-27-78; 8:45 am)



## [6740-02-M]

(Docket No. ID-1809)

HERBERT W. SEARS

Notice of Application

DECEMBER 19, 1978.

Take notice that on November 30, 1978, Herbert W. Sears, (Applicant), filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, The Connecticut Light and Power Company, Public Utility.

Director, The Hartford Electric Light Company, Public Utility.

Director, Western Massachusetts Electric Company, Public Utility.

Director, Holyoke Water Power Company, Public Utility.

Director, Holyoke Power and Electric Company, Public Utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMBS,  
Secretary.

(FR Doc. 78-36100 Filed 12-27-78; 8:45 am)

## [6740-02-M]

(Docket Nos. RI74-188 and RI75-21)

INDEPENDENT OIL &amp; GAS ASSOCIATION OF WEST VIRGINIA

Notice of Petition for Declaratory Order

DECEMBER 19, 1978.

Take notice that on December 13, 1978, Columbia Gas Transmission Corporation (Columbia) filed a petition for a declaratory order pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure.

Columbia requests that the Commission issue an order clarifying that the area rate clauses contained in the settlement agreements approved by the Commission in the above-referenced dockets authorize affected producers to collect increased prices under the

Natural Gas Policy Act of 1978 where applicable. Columbia further requests that the Commission confirm that such area rate clauses do not constitute indefinite escalator clauses within the meaning of Section 270.205 of the Commission's Policy and Interpretations under such Act.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMBS,  
Secretary.

(FR Doc. 78-36101 Filed 12-27-78; 8:45 am)

## [6740-02-M]

(Docket No. CI61-592, et al.)

LADD PETROLEUM CORP. (SUCCESSOR TO LVO CORP.)

Notice of Petition of Ladd Petroleum Corporation for Amendment of "Order Amending Orders, etc." Issued November 13, 1975

DECEMBER 19, 1978.

Take notice that on September 20, 1978, Ladd Petroleum Corporation (Ladd), 830 Denver Club Building, Denver, Colorado 80202, filed in Docket No. CI61-592, et al., a petition to amend the "Order Amending Orders Issuing Certificates of Public Convenience and Necessity, Substituting Respondent, Redesignating Proceedings, Accepting Notices of Succession and Certificates of Adoption for Filing, Redesignating FPC Gas Rate Schedules, and Terminating Small Producer Certificate" issued November 13, 1975 in the captioned proceeding, by deleting from that order all references to the certificates and sales corresponding to the related gas rate schedules.

Ladd recently has determined that properties covered by nine of Ladd's gas rate schedules redesignated by the Commission's order were sold by LVO Corporation (LVO) prior to LVO's merger into Utah International Inc. At the time of the merger LVO did not own these properties, and therefore, Ladd did not acquire any right or interest in them as a result of Utah's as-

signment to Ladd. However, Ladd's application filed with the Commission on February 18, 1975, to succeed to LVO's interests inadvertently and mistakenly included the LVO certificate dockets and rate schedules related to sales of gas from these properties. Consequently, the Commission's order of November 13, 1975, inadvertently and improvidently provided for Ladd's succession to the certificates and related FPC (FERC) gas rate schedules associated with properties no longer held by LVO at the time of its merger into Utah, according to Ladd's petition.

Any person desiring to be heard or to make any protest with references to said petition, on or before January 8, 1979, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36102 Filed 12-27-78; 8:45 am)

## [6740-02-M]

(Docket Nos. RP75-96 and RP76-100)

MICHIGAN WISCONSIN PIPE LINE CO.

Order Approving Stipulation and Agreements Ordering Refunds and Severing Certain Issues for Separate Disposition

DECEMBER 19, 1978.

On September 3, 1976, and January 31, 1977, Michigan Wisconsin Pipe Line Company (Mich Wisc) filed in the captioned dockets, respectively, proposed Stipulation and Agreements in settlement of those proceedings.<sup>1</sup>

<sup>1</sup>On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent Commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted.

Footnotes continued on next page

The Federal Energy Regulatory Commission (Commission) finds that each of such proposed Stipulation and Agreements is reasonable and should be approved. The Commission further finds that the reserved issues should be severed for separate consideration and disposition and that such severance is consistent with the terms of the settlement agreements. Details of the rate increase proposals and the terms of the related settlement agreements are described below.

## Docket No. RP75-96

In Docket No. RP75-96, Mich Wisc, on April 30, 1975, tendered for filing proposed changes in the rates contained in its FPC Gas Tariff designed to effect an increase in jurisdictional revenues of \$65,992,505 annually. The proposed increase was based on a test period consisting of the 12 months ended January 31, 1975, as adjusted for known and measurable changes through October 31, 1975. Mich Wisc requested an effective date of June 1, 1975, for the proposed rate increase.

By order issued May 19, 1975, the FPC accepted the proposed changes for filing, subject to certain conditions, and suspended the use thereof for five months until November 1, 1975. One of the aforementioned conditions was that Mich Wisc file revised tariff sheets reflecting the elimination from its proposed rates of \$11,265,490 in interest reimbursement payments to producers.<sup>2</sup>

On September 15, 1975, Mich Wisc filed tariff sheets intended to replace those sheets which the Company had originally filed on April 30, 1975. Such replacement tariff sheets reflected the rate level included in the April 30, 1975, filing as revised upward to reflect the net effect of: (1) purchased gas adjustment (PGA) increases as a result of the increased cost of imported Canadian gas as well as an increase in the cost of gas purchased from Texas Gas Transmission Corporation; (2) an increase in the balance of advance payments outstanding as of November 1, 1975.

Footnotes continued from last page acted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

<sup>2</sup>By order issued July 11, 1975, Michigan Wisconsin's application for reconsideration of the May 19, 1975, order was denied.

On September 23, 1976, with initial comments due on October 7, 1976, and reply comments due on October 27, 1976. By notice issued October 14, 1976, the date for initial comments was extended to October 15, 1976, and the date for reply comments was extended to November 5, 1976.

The proposed settlement agreement reserved for Commission consideration two issues: (1) the rate base treatment to be afforded certain advance payments, and (2) the rate treatment to be afforded Gas Arctic and Northern Border project costs. (Agreement, p. 1). Such consideration was to be based upon the comments filed to the settlement agreement.

Staff opposed rate base treatment of certain of the costs in Initial Comments and Reply Comments filed, relative to the Stipulation and Agreement, on October 15, 1976, and November 5, 1976, respectively. However, Staff concurred in all other aspects of the proposed settlement agreement. The Initial Comments and Reply Comments of Mich Wisc, filed on such dates, opposed the Staff position on those two issues and urged FPC approval of the Stipulation and Agreement in its entirety.

With regard to the issues resolved by the Stipulation and Agreement, the agreed upon rates would effect a reduction in the proposed rate increase of \$23,637,187,<sup>3</sup> exclusive of changes in the cost of purchased gas. Commission acceptance of staff's position on the reserved issues would result in a further reduction with additional refunds.

The Stipulation and Agreement in Docket No. RP75-96 Article I provides that the rates in Docket No. RP75-96 will be at levels set forth in Appendix B of the Agreement effective as of November 1, 1975, and thereafter subject to adjustment for changes in the cost of gas purchased pursuant to Section 15 of the general terms and conditions of its tariff and Article III. Within ten (10) days after the Commission's order approving the Stipulation and Agreement, Mich Wisc will file revised tariff sheets reflecting the rates shown in Appendix B.

Article II provided that Mich Wisc, within thirty (30) days after the settlement rates become effective, will refund the difference between amounts collected beginning on November 1, 1975, under the rates determined in Article I. These refunds will be made including an interest rate of 9% per annum from the date of receipt of payment by Mich Wisc until the date refund checks are placed in the mail.

on September 23, 1976, with initial comments due on October 7, 1976, and reply comments due on October 27, 1976. By notice issued October 14, 1976, the date for initial comments was extended to October 15, 1976, and the date for reply comments was extended to November 5, 1976.

The proposed settlement agreement reserved for Commission consideration two issues: (1) the rate base treatment to be afforded certain advance payments, and (2) the rate treatment to be afforded Gas Arctic and Northern Border project costs. (Agreement, p. 1). Such consideration was to be based upon the comments filed to the settlement agreement.

Staff opposed rate base treatment of certain of the costs in Initial Comments and Reply Comments filed, relative to the Stipulation and Agreement, on October 15, 1976, and November 5, 1976, respectively. However, Staff concurred in all other aspects of the proposed settlement agreement. The Initial Comments and Reply Comments of Mich Wisc, filed on such dates, opposed the Staff position on those two issues and urged FPC approval of the Stipulation and Agreement in its entirety.

With regard to the issues resolved by the Stipulation and Agreement, the agreed upon rates would effect a reduction in the proposed rate increase of \$23,637,187,<sup>3</sup> exclusive of changes in the cost of purchased gas. Commission acceptance of staff's position on the reserved issues would result in a further reduction with additional refunds.

## The Stipulation and Agreement in Docket No. RP75-96

Article I provides that the rates in Docket No. RP75-96 will be at levels set forth in Appendix B of the Agreement effective as of November 1, 1975, and thereafter subject to adjustment for changes in the cost of gas purchased pursuant to Section 15 of the general terms and conditions of its tariff and Article III. Within ten (10) days after the Commission's order approving the Stipulation and Agreement, Mich Wisc will file revised tariff sheets reflecting the rates shown in Appendix B.

Article II provided that Mich Wisc, within thirty (30) days after the settlement rates become effective, will refund the difference between amounts collected beginning on November 1, 1975, under the rates determined in Article I. These refunds will be made including an interest rate of 9% per annum from the date of receipt of payment by Mich Wisc until the date refund checks are placed in the mail.

<sup>3</sup>The \$23,637,187 figure is correct, although p. 1 of Agreement shows a figure of \$24,348,427.



Article III pertains to advance payments and will be discussed under the section on reserved issues below.

Article IV involves expenditures incurred for the account of Mich Wisc by the Gas Arctic Northwest Study Group and the Northern Border Pipe Line Study Group. This Article will be discussed under the section on reserved issues below.

Article V provides that unrecovered purchased gas costs based on average monthly balances for the base period adjusted to reflect the average level in the amount of \$2,275,399 will be included in working capital as a rate base item. This Article notes that the cost of service involved in this proceeding is for a one year locked-in period beginning November 1, 1975, and ending October 31, 1976; therefore, rate base treatment of unrecovered purchased gas costs will not prejudice any party or staff from taking a different position in any future proceeding.

Article VI pertains to the cost-of-service for Mich Wisc's exploration and development program. The settlement rates include \$7,164,600 which represents the exploration and development costs incurred for the test year.<sup>4</sup>

Article VII provided that the settlement cost of service is based on book depreciation rates of 4.0% for transmission plant, 7.5% for gathering plant and 4.4% for storage plant.

Article VIII requests the Commission to confirm in the settlement order that a reserve for deferred income taxes was deducted in an amount which is not in excess of the amount of reserve for deferred taxes resulting from the use of accelerated depreciation computed pursuant to Section 167(e)-1(h) of the Income Tax Regulations.

Article IX provided that the terms of the Stipulation and Agreement, if approved by the Commission, shall become effective on November 1, 1975, and shall remain in effect until such time as a change in Mich Wisc's rates become effective either as a result of a filing by Mich Wisc under Section 4 of the Act or by a determination by the Commission under Section 5 of the Act.

Article X is a general reservation indicating that the agreement represents a negotiated dollar settlement and does not reflect approval or acceptance by any party thereto of any ratemaking principle underlying or supposed to underlie any of the rates or refunds provided for therein. This Article also provides for acceptance of the settlement in its entirety.

#### Docket No. RP76-100

IN Docket No. RP76-100, Mich Wisc, on April 30, 1976, tendered for filing

<sup>4</sup>This amount equates to \$2.031 per Mcf of production which is the equivalent price of fuel oil in the Detroit market.

certain revised tariff sheets to its FPC Gas Tariff, seeking an increase in annual jurisdictional revenues of \$68,705,227. The proposed increase in rates was based on a test period of the twelve months ended January 31, 1976, as adjusted for changes expected to occur during the nine month period ending October 31, 1976. Mich Wisc proposed that the revised tariff sheets become effective on June 1, 1976. Public notice of the filing was issued on May 13, 1976. By order of May 28, 1976, the effectiveness of the filed revised tariff sheets was suspended until November 1, 1976, subject to the condition that Mich Wisc file revised tariff sheets to go into effect on November 1, 1976, excluding from rate base facilities which were not certificated and placed in service on or before October 31, 1976. On October 27, 1976, Mich Wisc filed revised tariff sheets and a motion to make its suspended rates effective subject to refund. Since such tariff sheets did not reflect the exclusion of non-certificated facilities from rate base, the FPC rejected them by order issued on November 24, 1976. In response to that order, Mich Wisc, on December 1, 1976, filed revised tariff sheets reflecting the elimination from rate base of certain non-certificated facilities pursuant to Ordering Paragraph (A) of the FPC order of November 24, 1976. By order issued December 29, 1976, the FPC accepted the revised tariff sheets, including those pertaining to purchased gas cost adjustments, to be effective November 1 and 2, 1976, respectively.

Settlement conferences were held on October 8, November 11 and 12, and December 17, 1976, among the FPC Staff, Mich Wisc and other parties to this proceeding, which resulted in the filing on January 31, 1977, of a proposed Stipulation and Agreement. The agreement provided that the treatment of two issues would be reserved for determination by the Commission based upon comments to be filed by Mich Wisc and staff. The two issues reserved for consideration by the Commission pertained to: (1) the amounts advanced to producers which should be included in rate base, and (2) the amounts contributed by Mich Wisc to the Gas Arctic and Northern Border study groups which should be afforded rate base treatment. Notice of the filing of the Stipulation and Agreement was issued on February 8, 1977, and Initial Comments and Reply Comments were filed on February 25, 1977 and March 18, 1977, respectively. All commenting parties supported approval of the settlement and, in addition, Mich Wisc and staff filed comments on the reserved issues. Staff also filed comments in opposition to the method provided in the settlement for calcu-

lating refunds attributable to any advance payment amounts ultimately excluded by the Commission from rate base.

#### The Stipulation and Agreement in Docket No. RP76-100

Article I provides for the filing of reduced rates 10 days after Commission approval of the settlement to be effective November 1, 1976. The Article also provides that within 10 days after any final determination by the Commission that staff's position on the reserved issues should be adopted, the Company will file reduced rates to be effective November 1, 1976.

Article II provided that Mich Wisc will make refunds within 30 days after the settlement becomes effective and that such refunds will include 9% per annum interest to the date that refund checks are placed in the mail.

Article III provides for advance payments to be included in rate base. Mich Wisc would include \$246,546,732 while staff contends that \$156,081,764 should be accorded rate base treatment. Mich Wisc and Staff's treatment of advance payments are set forth in this Article and provides for Commission determination of proper treatment of advance payments in this case. Any refunds will be made base upon a factor of 17.12% per annum times any advance payments which may be excluded from rate base plus interest at nine percent per annum. Item No. 6 of this Article provided a schedule for payback of \$21,680,000 in advance payments without regard to the payback provision set forth in the advance payment agreement.

Article IV involves the inclusion of \$2,409,500 for reimbursement of expenditures incurred for Mich Wisc by the Gas Arctic and Northern Border Study Groups. Staff proposes to exclude such expenditures from rate base. This issue is reserved for Commission decision. In the event that the Commission determines that these costs should not be included in rate base, Mich Wisc shall make refunds based on an amount equal to 17.12% times such costs plus interest at nine percent per annum and reduce its tariff rates accordingly.

Article V provides for semi-annual PGA and R&D filings to become effective on November 1 and May 1 of each year commencing November 1, 1976. Mich Wisc would be allowed carrying charges on the amounts recorded in the Deferred Purchase Gas Cost Account subject to prospective application of any final Commission determination in Docket No. R-406. Mich Wisc will file appropriate tariff sheets within 10 days after the settlement becomes effective.

Article VI pertains to the inclusion of \$10,783,105 in cost of service in sup-

port of Mich Wisc's exploration and development program.

Article VII sets forth the settlement depreciation rates of 4.1 percent for transmission plant, 7.5 percent for gathering plant, and 4.5 percent for storage plant. All parties agree that Mich Wisc shall reflect such rates on its books effective November 1, 1976.

Article VIII provides for a tariff revision to the LVS-1 rate schedule.

Article IX contains a commitment by Mich Wisc to support rates assigned to services under Volume No. 2 of its FPC Gas Tariff with cost of service studies in its next general rate increase application.

Article X requests the Commission to confirm, in its order approving the settlement, that in arriving at the rate base included in the approved cost of service, a reserve for deferred income taxes was deducted in an amount which is not in excess of the amount of reserve for deferred taxes resulting from the use of accelerated depreciation computed pursuant to the provisions of Section 167(e)-1(h) of the Income Tax Regulations.

Article XI provides for termination of the Agreement on the date that Mich Wisc's rates are superseded by rates made effective under Section 4 or Section 5 of the Natural Gas Act with the exception of agreements set forth in paragraph 4 through 7 of Article III, paragraph 2 of Article IV, and Article V and Article VIII which will continue in effect.

Article XII is a general reservation indicating that the Agreement represents a negotiated dollar settlement and, does not reflect approval or acceptance by any party thereto of any rate making principle underlying or supposed to underlie any of the rates or refunds provided for therein.

#### Issues Reserved for Commission Disposition

In each of the two settlement agreements involved herein, two common issues are reserved for Commission disposition based upon the comments to be filed.

1. Whether certain dollar amounts which have been advanced by Mich Wisc to producers should be included in rate base. This issue involves, *inter alia*, the determination of the standards to be used in establishing the amounts to be included in rate base.

2. Whether all or a portion of the costs which it is agreed that Mich Wisc incurred, in sponsorship of the Arctic Gas Study Group and the Northern Border Pipeline Study Group, should be included in its rate base.

In addition, staff in its comments filed in Docket No. RP76-100 has opposed the method provided in the settlement for computing any refunds

that may result from Commission disallowance of certain advance payment amounts in rate base.

On March 7, 1978, Mich Wisc filed a motion in Docket Nos. RP75-96 and RP76-100 requesting that the reserved issues be served for separate consideration in due course and that the Commission approve the non-contested portions of the settlement. We recognize the delay that has occurred in disposing of these settlement agreements. We will therefore accept Mich Wisc's proposal and sever the contested issues along with the refund question raised by staff for separate disposition. In so doing we do not intend to imply that there will be substantial delay in deciding the contested issues. It is our intent to dispose of these issues promptly. In the meantime approval of the non-contested portions of the settlements is in the public interest and is consistent with the terms of the settlement agreements.

#### Discussion

In Opinion No. 568<sup>5</sup> the Federal Power Commission expressed the intent to modify its pricing approach toward pipeline production "in order to provide a regulatory climate conducive to an aggressive pipeline exploration program." The FPC ordered that gas produced from pipeline owned (or pipeline affiliate owned) leases acquired after the date of the Opinion (October 7, 1969) would be priced at the applicable area rates, except that upon a showing of special circumstances a different result might be warranted. In mid-1970, Mich Wisc began an exploration and development program in the Hugoton-Anadarko and Rocky Mountain areas and in Docket No. RP73-102 attempted to demonstrate "special circumstances" in support of cost of service treatment for its E&D program. In its order of July 6, 1977, the FPC expressed some doubt that "special circumstances" had been shown, but accepted a settlement amount of \$1,523,782 to be included in Mich Wisc's rates for a three-year period ending October 31, 1976, after which Mich Wisc's production must be priced at area or national rates or Mich Wisc must come forward with more evidence on "special circumstances."

During the pendency of the production issue in Docket No. RP73-102, rate increase applications were filed in Docket Nos. RP75-96 and RP76-100, wherein Mich Wisc proposed to continue cost of service treatment for its production operations. Mich Wisc estimated costs of service of \$7,876,435 and \$13,005,556 in Docket Nos. RP75-96 and RP76-100, respectively. The

<sup>5</sup>Opinion No. 568, Pipeline Production Area Rate Proceeding (Phase I), Docket No. RP66-24, issued October 7, 1969.

settlements tendered in these dockets on September 3, 1976 and January 31, 1977, would reduce the costs of service to \$7,164,600 and \$10,783,105, respectively.

We are concerned that Docket No. RP75-96 covers essentially the same time period as the third year of the settlement in Docket No. RP73-102 which limited cost of service treatment to \$1,523,782. However, we recognize that the FPC afforded Mich Wisc an opportunity in future rate cases to make a showing of "special circumstances." We recognize also that while Mich Wisc was required to price its production after November 1, 1976, on an area or national rate basis it was given an opportunity to show "special circumstances." The parties to the two settlements have concluded that Mich Wisc should be encouraged in its E & D efforts and have agreed to cost of service allowances to be included in rates. It is our view that the parties negotiated in good faith and could not have known at that time that the FPC would issue an order months later that would question the "special circumstances" showing in Docket No. RP73-102.

We will accept the cost of service treatment included in the settlements in Docket Nos. RP75-96 and RP76-100 as a reasonable resolution of this issue in these proceedings. In so doing we in no way express any policy determination toward the pricing of pipeline production nor are we prepared at this time to express any views toward the requirements for showing "special circumstances." This approach is consistent with actions taken by the FPC in other cases approving settlements involving the same issue<sup>6</sup>.

The proposed settlement rates in Docket Nos. RP75-96 and RP76-100 reflect Seaboard's cost classification, cost allocation and rate design. This is inconsistent with those provisions of the FPC order of July 6, 1977, which required that Mich Wisc modify its rates in Docket No. RP76-100 to reflect the United's methodology; however it does not appear to be inconsistent with the intent of the order—that refunds be computed on the same basis as the rates were collected and that any modification of rate design methodology would apply prospectively. This matter is complicated by the fact that the July 6, 1977, order was issued after the settlements had been tendered in these dockets.

<sup>6</sup>Kansas Nebraska Natural Gas Company, Inc., Docket Nos. RP72-32, et al., issued December 7, 1976; Northern Natural Gas Company, Docket Nos. RP74-75, et al., issued July 27, 1976.

<sup>7</sup>Atlantic Seaboard Corp., et al., 11 FPC 43 (1952).

<sup>8</sup>United Gas Pipe Line Company, Docket No. RP72-75 (Phase II), Opinion No. 671, issued October 31, 1973.



We note that in a proposed settlement filed in a subsequent rate increase application (Docket No. RP77-60) Mich Wisc has agreed to the United methodology. Since we are concerned in the instant dockets with settlements for two locked-in periods, the issue is how to classify and allocate costs and design rates for refund purposes. It appears appropriate to accept the settlements' resolution of this issue for refund purposes. We do not consider this acceptance as inconsistent with the intent of the FPC order of July 6, 1977.

No parties have objected to the Stipulation and Agreement filed in each of the proceedings involved herein, and those parties which have commented have urged approval. The period for which the settlement rates in Docket No. RP75-96 are to be effective has been "locked-in" by the rates filed in Docket No. RP76-100 while the period for which the settlement rates in that latter docket are to be effective has been "locked-in" by the rate changes filed in Docket No. RP77-60. The Stipulation and Agreement in each of the proceedings involved herein provide for substantial refunds relative to the issues resolved thereby.

Mich Wisc filed, on March 3, 1978, a Motion requesting that the FERC approve the Stipulation and Agreement in each of the subject proceedings forthwith, and make its decision relative to the reserved issues at such later time as the FERC deems feasible and desirable. Several parties have filed pleadings in support of such Mich Wisc motion, stating the desirability of receipt by the customers in the near future of the refunds due pursuant to the issues resolved by each Stipulation and Agreement. No party has opposed such motion.

Based upon a review of the record in each proceeding herein, including each Stipulation and Agreement and the pleadings and comments filed, the Commission finds it appropriate to reserve decision on reserved issues to a later date, but that each Stipulation and Agreement, as to the issues resolved thereby, represents a reasonable resolution of such issues in the public interest, and that each such Stipulation and Agreement should be approved and adopted as hereinafter ordered.

The Commission finds: (1) Approval, as hereinafter ordered, of the Stipulation and Agreements in these proceedings, as filed with the FPC on September 3, 1976, in Docket No. RP75-96, and on January 31, 1977, in Docket No. RP76-100, is in the public interest in carrying out the provisions of the Natural Gas Act, and the rates proposed therein which reflect the terms of the settlements should be made effective as provided in such Stipulation and Agreements.

(2) Good cause exists to reserve for separate disposition, the issues reserved therefor in the subject Stipulation and Agreements, as well as the refund question raised by staff in its comments in Docket No. RP76-100.

The Commission orders: (A) Mich Wisc's motions for approval of the proposed settlements in the proceedings involved herein are granted, the Stipulation and Agreements filed herewith are incorporated by reference herein and accepted, and the rates provided therein shall become effective for the respective applicable periods, subject to the determinations made relative to the reserved issues.

(B) Mich Wisc shall comply with the terms and conditions of each subject Stipulation and Agreement and shall refund all amounts required thereby relative to issues resolved therein, with interest pursuant to the terms of the settlement agreements, provided that further refunds may be required relative to the issues reserved therein for future Commission decisions.

(C) Within 30 days after the refunds have been made, Mich Wisc shall file a report of the refunds made along with copies of the releases signed by each customer.

(D) The issues reserved in the Stipulation and Agreements, along with the proper method for calculating refunds on any advance payment amounts ultimately disallowed rate base treatment, shall be subject to separate consideration and disposition.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36103 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket Nos. RP76-96, RP77-57 and RP77-14)

#### NATIONAL FUEL GAS SUPPLY CORP.

##### Notice of Extension of Time

DECEMBER 15, 1978.

On December 11, 1978, Commission Staff Counsel filed a motion for extension of time to file briefs on exceptions to the initial decision issued in this proceeding on November 14, 1978. The motion states that other Commission business has prevented both the technical and legal staff from having adequate time to prepare its brief. The motion further states that no party objects to the extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 21,

1978, for the filing of briefs on exceptions. Briefs opposing exceptions shall be filed on or before January 10, 1979.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36104 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket No. RM79-3)

#### NATURAL GAS POLICY ACT OF 1978

##### Notice of Receipt of Report of Determination Process

DECEMBER 21, 1978.

Pursuant to section 18 CFR 274.105 of the Federal Energy Regulatory Commission's Regulations, a jurisdictional agency may file a report with the Commission describing the method by which such agency will make certain determinations in accordance with sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Reports in conformance with 18 CFR 274.105 have been received by the Commission from the following jurisdictional agencies:

##### Agency and Date

State of New Mexico Energy and Minerals Department, Oil Conservation Division, November 29, 1978.  
State of Louisiana Department of Conservation, November 29, 1978.  
Railroad Commission of Texas, November 30, 1978.  
West Virginia Department of Mines, Oil and Gas Division, November 30, 1978.  
Alabama State Oil and Gas Board, November 30, 1978.  
State Oil and Gas Board of Mississippi, November 30, 1978.  
Kansas State Corporation Commission Conservation Division, November 30, 1978.  
State of Michigan, Department of Natural Resources, Geological Survey Division, December 1, 1978.  
State of California Department of Conservation Division of Oil and Gas, December 4, 1978.  
State of Wyoming Office of Oil and Gas Conservation Commission, December 4, 1978.  
State of Colorado Department of Natural Resources, December 5, 1978.  
State of Ohio Department of Natural Resources Division of Oil and Gas, December 6, 1978.  
State of Nebraska Oil and Gas Conservation Commission, December 15, 1978.

Copies of these reports are available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

LOIS D. CASHELL,  
Acting Secretary.

(FR Doc. 78-36114 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket No. ER79-92)

#### NEW ENGLAND POWER CO.

##### Notice of Proposed Changes in Rates and Charges

DECEMBER 15, 1978.

Take notice that on November 29, 1978, New England Power Company ("NEP") filed revised tariff sheets constituting a new Rate W-1 for its Primary Service for Resale and its Contract Demand ("CD") Service. NEP requests an effective date of February 1, 1979. NEP states that the W-1 increase is less than one-half of one percent and that its revised tariff sheets will result in an increase in jurisdictional revenues in the basis of a 1979 test year of approximately \$1,241,702. This increase results from an increase in revenues of \$98,580 from CD customers and an increase in revenues of \$1,143,122 from the Primary customers.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before December 29, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, petitions to intervene or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing and supporting documents are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36105 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket No. ER79-99)

#### NIAGARA MOHAWK POWER CORP.

##### Notice of Filing

DECEMBER 19, 1978.

Take notice that Niagara Mohawk Power Corporation (Niagara), on December 7, 1978, tendered for filing as a rate schedule, a transmission agreement between Niagara and Central Hudson Gas & Electric Corporation (Central Hudson) dated October 30, 1978.

Niagara states that the service to be rendered by Niagara provides for the transmission of power and energy between (a) Niagara's 345 Kv transmission connections with the Power Authority of the State of New York's

Blenheim-Gilboa Pumped Storage Power Project and (b) Niagara's 345 Kv transmission connections with Central Hudson.

Niagara further states that the transmission capacity to be made available to Central Hudson will be in the amount of 100 megawatts.

Copies of the filing were served upon the Central Hudson Gas & Electric Corporation and the Public Service Commission of the State of New York, according to Niagara.

Niagara proposes an effective date of November 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36106 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket No. ER79-96)

#### OHIO POWER CO.

##### Notice of Filing

DECEMBER 19, 1978.

Take notice that American Electric Power Service Corporation (AEP) on December 5, 1978, tendered for filing on behalf of its affiliate Ohio Power Company (Ohio Power), Modification No. 7 dated October 1, 1978 between Ohio Power Company and Dayton Power and Light Company designated Ohio Power Rate Schedule FERC No. 36.

AEP states that Section 1 of Modification No. 7 provides for an increase in the demand charge for Short Term Power from \$0.60 to \$0.70 per kilowatt per week and also in the transmission charge for third party Short Term transaction from \$0.15 to \$0.175/kw-week. AEP further states that Section 2 provides for an increase in the demand charge for Limited Term Power from \$3.25 to \$3.75 per kilowatt per month and Section 3 of Modification No. 7 provides for an increase in

the transmission charge for third party Limited Term transactions from \$.65 per kilowatt per month to \$0.75 per kilowatt per month, both schedules.

AEP indicates that since the use of Short Term Power and Limited Term Power Service cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification. AEP further indicates that Exhibit I which was included with the filing of this Modification, demonstrates that the increase in revenues, which would have resulted had the modification been in effect during the twelve month period ending January 1978 would have been \$94,166.68 (i.e., from \$2,106,901.90 to \$2,201,068.58).

AEP proposes an effective date of February 1, 1979, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Dayton Power and Light Company and Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36107 Filed 12-27-78; 8:45 am)

#### [6740-02-M]

(Docket No. RP71-119 etc.)

#### PANHANDLE EASTERN PIPE LINE CO. ET AL

Order Granting Petition for Relief From Payback Order, Consolidating Proceedings and Granting Intervention (Issued December 15, 1978)

##### PROCEDURAL HISTORY

On May 22, 1978, Anchor Hocking Corporation (A-H), Docket No. RP74-31-24, filed a petition for relief from the Commission's order of August 31,

<sup>1</sup>This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission," when used Footnotes continued on next page



1976, dismissing an earlier petition for extraordinary relief and ordering payback. A-H now seeks reversal of the payback order.

On August 11, 1978, Hercules Incorporated (Hercules), Docket No. TC78-34, filed a similar petition, requesting relief from the payback orders issued in Docket No. RP74-31-22 on October 31, 1974; July 30, 1975; April 1, 1976, and September 3, 1976.

Both petitioners base their requests on the allegedly advantageous treatment afforded to similarly situated customers on the Panhandle Eastern Pipe Line Company system (Panhandle). A review of the Commission's actions in granting relief to Panhandle's customers from payback obligations incurred under an unjust and unreasonable interim curtailment plan compels us to grant the requested relief out of equitable considerations.

The curtailment priority guidelines of Order No. 467-B, Docket No. R-469 (49 FPC 583), created a distinction between firm and interruptible pipeline customers. Both Hercules and A-H had interruptible contracts with Panhandle, and faced complete curtailment under a 467-B plan whenever Panhandle was required to curtail its priority No. 3 customers. The order issued in Docket No. RP71-119 on November 6, 1973, implemented a 467-B type plan on the Panhandle system effective November 1, 1973.

During the fall of 1973, Panhandle's interruptible customers filed numerous petitions requesting extraordinary relief. Many of these interruptible customers needed natural gas for their feedstock or process requirements. At least six different administrative law judges presided over hearings on these petitions. Many petitioners received temporary relief pending final Commission action on their petitions for relief. Most such relief was subject to a payback requirement, i.e., a future reduction of gas consumption below a company's curtailment allocation to restore the excess gas used during periods of extreme shortage.

On February 27, 1976, the FPC issued Opinion No. 754, which prescribed a permanent curtailment plan for the Panhandle system and which abolished the firm-interruptible distinction. It is clear that had this curtailment plan been in effect during the interim period, Hercules and A-H would not have required extraordinary relief and would not have incurred payback obligations. We must decide, therefore, how to treat the payback obligations incurred by A-H and Hercules under the 467-B plan.

Footnotes continued from last page in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

#### A. Hercules.

On September 4, 1974, Hercules filed its extraordinary relief petition.<sup>1</sup> Hercules' plant at Louisiana, Missouri produces anhydrous ammonia, used principally in the manufacture of fertilizers, and ammonium nitrate prills, an explosive used to mine coal. By order issued October 31, 1974 the FPC granted temporary extraordinary relief for feedstock and process uses to permit ammonia production at full capacity. This relief pending hearing was subject to a payback condition.

The initial decision<sup>2</sup> provided Hercules with a minimum of 4,600 Mcf of gas per day, subject to a payback condition. This extraordinary relief gas was delivered subject only to the curtailment priority of Category 1 (residential and small commercial uses). The FPC affirmed the initial decision, dismissed the petition for extraordinary relief as moot, and ordered payback.<sup>3</sup>

On March 26, 1976, Hercules filed a complaint<sup>4</sup> requesting waiver of its payback obligations in view of Opinion No. 754, which eliminated the firm-interruptible distinction. The FPC dismissed the complaint on April 1, 1976.<sup>5</sup>

Hercules' application for rehearing was denied by operation of law, and it appealed to the U.S. Court of Appeals for the Third Circuit. Hercules sought to be excused from further payback obligations and requested return of the gas already paid back.<sup>6</sup>

The Court held "that all payback obligations incurred by Hercules as a result of the firm-interruptible distinction are now unenforceable."<sup>7</sup> The Court added:

In so holding we do not mean to indicate that Hercules is entitled to restitution for all injuries suffered as a result of Panhandle's unlawful curtailment plan. Unlike rate overcharges prior allocations of gas under a plan now found to have been unreasonable cannot be easily refunded. Not all parties injured as a result of the necessity to react quickly to the natural gas crisis can be made whole.<sup>8</sup>

<sup>1</sup>Docket No. RP73-31-22.

<sup>2</sup>Initial Decision by Presiding Administrative Law Judge Liebman, dated July 30, 1975, 54 FPC \_\_\_\_\_. On March 22, 1976, after Opinion No. 754 issued, Panhandle reduced temporary relief deliveries to Hercules to the 4,600 Mcf recommended by the Initial Decision.

<sup>3</sup>Order Dismissing Petition for Extraordinary Relief and Ordering Payback, September 3, 1976.

<sup>4</sup>Docket No. RP76-75.

<sup>5</sup>Order Denying Motion and Request and Dismissing Complaint, April 1, 1976.

<sup>6</sup>Hercules, Inc. v. FPC, No. 76-1593 Brief for Petitioner, August 23, 1976, at 34, requested return of "the volumes of gas withheld from Hercules between April 1, 1976, and July 31, 1976 pursuant to Ordering Clause B of the Commission's April 1, 1976 Order."

<sup>7</sup>Hercules, Inc. v. FPC, 552 F.2d 74, 89 (3 Cir. 1977).

<sup>8</sup>Ibid.

Upon remand, the FPC released Hercules from any further payback obligation.<sup>10</sup> At that time Hercules claims to have repaid 1,107,000 Mcf of its 1,550,000 Mcf extraordinary relief obligations.

#### B. Anchor-Hocking.

On December 12, 1974, A-H also filed a petition for extraordinary relief.<sup>11</sup> A-H requested relief of 790 Mcf/d to operate the feeders and lehrs in its Winchester, Indiana glass plant. The Commission set the petition for hearing and granted A-H temporary relief subject to payback.<sup>12</sup>

The initial decision by Administrative Law Judge Michel Levant reclassified 290 Mcf/d into priority 2 as extraordinary relief.<sup>13</sup> All temporary and permanent relief gas was ordered to be paid back. This initial decision relied upon the reasoning of Judge Zimmet, which rejected the firm interruptible distinction in Panhandle's curtailment plan.<sup>14</sup>

On August 31, 1976, the Commission dismissed A-H's petition for extraordinary relief as moot and ordered payback of the outstanding extraordinary relief volumes. Of the 47,072 Mcf of extraordinary relief provided, A-H claims to have repaid 43,293 Mcf.

#### C. The Consolidated Parties.

The Commission consolidated for hearing a number of extraordinary relief petitions which were filed by eleven Panhandle customers.<sup>15</sup> The initial decision of Administrative Law Judge William Ellis granted extraordinary relief to four of the nine petitioners which remained in the proceeding, subject to payback of only those vol-

<sup>10</sup>Order Granting Rehearing, Docket No. RP71-119, RP74-31-22, March 8, 1977.

<sup>11</sup>Docket No. RP73-31-24. A-H had filed a previous petition on March 4, 1974, in Docket No. RP73-31-20. A hearing in that docket was held on May 30, 1974, and the Commission approved a settlement in an order issued July 22, 1974, 52 FPC 199.

<sup>12</sup>Order issued January 24, 1975.

<sup>13</sup>Initial Decision issued September 24, 1975, 54 F.P.C. \_\_\_\_\_. This temporary relief was granted to give A-H an opportunity to convert its feeders and lehrs to oil.

<sup>14</sup>Panhandle Eastern Pipe Line Company, Docket No. RP71-119, Initial Decision issued August 29, 1975, 54 F.P.C. \_\_\_\_\_.

<sup>15</sup>Panhandle Eastern Pipeline Company, Docket Nos. RP71-119, et al. order issued December 14, 1973. The parties ultimately consolidated were: Southeastern Michigan Gas Company, Docket RP74-31-1; E. I. Du Pont de Nemours and Company, Docket No. RP74-31-2; Missouri Refractories, Docket No. RP74-31-4; Central Illinois Service Company, Docket No. RP74-31-5; Marblehead Lime Company, Docket No. RP74-31-7; Village of Morton, Illinois, Docket No. RP74-31-10; Mueller Brass Company, Docket No. RP74-31-11; Battle Creek Gas Company and the City of Battle Creek, Michigan, Docket No. RP74-31-13; Anderson Clayton & Co., Docket No. RP74-31-15; City of Monroe City, Missouri, Docket No. RP74-31-16; and Hayes-Albion Corp., Docket No. RP74-31-17.

umes "utilized in any manner other than that specified in the grant . . ."

The Commission's order of March 8, 1977,<sup>17</sup> commented favorably upon extending the payback obligation to include all relief volumes. However, the Commission did not order payback in light of the Third Circuit decision. As a result none of the consolidated parties ever paid back any extraordinary relief gas, unlike the similarly situated petitioners.

#### D. Quanex.

Quanex is also an interruptible Panhandle customer which sought extraordinary relief from the 467-B plan. Quanex uses natural gas in the manufacture of cold-drawn seamless steel tubing.<sup>18</sup> The Commission granted Quanex temporary relief subject to payback.<sup>19</sup> On August 31, 1976, the Commission dismissed the Quanex petition as moot in light of Panhandle's new curtailment plan but continued the payback obligation.<sup>20</sup>

After the Third Circuit's decision, Quanex petitioned for relief from its payback obligations and for the return of the gas already paid back to Panhandle.

The Commission granted the Quanex petition, and ordered Panhandle to return the extraordinary relief gas which Quanex had paid back.<sup>21</sup> The amount of gas returned was limited to the amount that Quanex would have received if the Opinion No. 754 plan had been in effect. As a result, of the 165,872 Mcf of extraordinary relief gas received and paid back by Quanex since 1974, 153,859 Mcf was to be added to the Quanex curtailment allocation during the course of a twelve month restitution period.<sup>22</sup>

In sum, of the interruptible process use customers: four never were required to repay their relief gas, one had all payback volumes returned, and the two petitioners A-H & Hercules have partially repaid their relief volumes. The latter two companies, through their petitions herein, seek a return of the volumes they have paid back. Providing a return of their payback volumes would accord A-H and

<sup>17</sup>Initial Decision issued December 30, 1974, Docket RP74-31-1, et al. mimeo at 67-68, 52 F.P.C. \_\_\_\_\_.

<sup>18</sup>Order Affirming in Part and Modifying in Part Administrative Law Judges' Initial Decision, issued March 8, 1977.

<sup>19</sup>The present Panhandle curtailment plan assigns Category 2 curtailment priority to Quanex.

<sup>20</sup>Order issued January 14, 1974, Docket No. RP71-119.

<sup>21</sup>Order issued August 31, 1976, Docket No. RP71-119.

<sup>22</sup>Order issued December 14, 1977, Docket No. TC78-2.

<sup>23</sup>Letter from J. T. Kennedy, Vice President, Panhandle Eastern Pipe Line Company, January 11, 1978, filed in Docket No. TC78-2.

Hercules treatment similar to that afforded other Panhandle interruptible customers in similar circumstances.

#### THE PRESENT PETITIONS

Both the Hercules and A-H petitions rely upon our order in *Quanex* to justify the return of the paid back gas. Both assert that the exact size of the payback volumes will not be disputed. Both would have us order Panhandle to file a statement of account showing the extraordinary relief received, amount paid back, and amount which would have been received if the Opinion No. 754 plan had been in effect during the period.

The Hercules and A-H petitions differ in two respects: (1) the amount of the volumes to be returned and (2) the suggested repayment period. The volumes of gas which A-H seeks returned is one-fourth the volume at issue in *Quanex*, while Hercules requests return of a volume of gas seven times greater than the volume ordered returned in *Quanex*. As a result, the A-H petition requests that the gas be delivered over a 12 month period, while Hercules suggests a 24 month repayment period.

In view of the similarity of issues raised by the two petitions, we are consolidating both dockets and addressing both in a single order.

No one has filed a petition to intervene in Docket No. TC-78-34.<sup>24</sup> General Motors Corporation (GM) has filed a timely petition for leave to intervene in Docket No. RP74-31-24.<sup>25</sup> No other notice of intervention, protest or petition to intervene has been filed. GM opposes the return of the gas which A-H has already paid back, but GM does not request a hearing on the A-H petition. GM asks that if we decide to grant relief to A-H, we make clear that the basis for our decision was an exercise of administrative discretion prompted by equitable considerations, and not required by the *Hercules, Inc. v. FPC* decision. We agree.

#### DISCUSSION

We order the return of payback volumes only as a last resort in our efforts to accord equal treatment to Panhandle customers. However, an application of the following policy considerations and legal principles to less compelling facts would not justify this exceptional remedy.

Payback obligations serve important public interests, which are weakened if payback orders are not ultimately enforced. As we have previously noted, a payback provision "deters exploitation

<sup>24</sup>Notice of Hercules' petition was published in the FEDERAL REGISTER on August 21, 1978, 43 FR 37001.

<sup>25</sup>Notice of this petition was published in the FEDERAL REGISTER on June 12, 1978, 43 FR 25378.

of extraordinary relief, prevents undue advantage going to the recipient of relief, and partially restores volumes taken from other customers."<sup>26</sup> And as Justice Clark observed, "Not only does 'common sense' as the Fifth Circuit states . . . support a payback but common honesty commands it."<sup>27</sup> In the absence of compelling equitable considerations, as exist in this case, these policies would dictate that payback volumes not be returned at the expense of other pipeline customers.

Additionally, we feel finality of agency decisions is important, especially in the context of pipeline curtailments. For example, a distinct possibility exists in times of a supply shortage that the delayed restitution of volumes allocated under interim plans ultimately found to be unjust and unreasonable could hinder otherwise available essential service. Similarly, given the recent trend of price increases in both natural gas and alternative fuels, restitution measured in volumes of gas may leave the restored party unjustly enriched, as well as provide a powerful incentive for parties with payback obligations to challenge the underlying curtailment plans in the courts.

A blind application of the doctrine of *res judicata* would also bar Hercules from return of its payback gas. Hercules requested the Court to direct a return of the gas,<sup>28</sup> but the Court declined to order such restitution. The current Hercules petition seeks precisely the relief which the Third Circuit has previously declined to provide.

On the facts presented here, however, we are compelled to conclude that equity overrides these concerns. The Third Circuit decision froze the extraordinary relief recipients at disparate stages of repayment. Only by returning the gas paid back will we place the petitioners on an equal footing with the consolidated parties and Quanex.

We emphasize that this remedy is appropriate for the unique sequence of events occurring in the Panhandle curtailment proceeding. It was one of the FPC's earliest attempts at balancing the complex policy concerns posed by "end-use" curtailment. In addition, the FPC's asynchronous processing of petitions for extraordinary relief from Panhandle's old plan resulted in assignments to different administrative law judges and payback orders issuing with varying effective dates. Return of payback gas here should not be viewed as a precedent to be applied to pay-

<sup>26</sup>*Texas Eastern Transmission Corporation (Carnegie Natural Gas Company)*, Opinion No. 716, Docket No. RP74-39-3, December 18, 1974, 52 FPC 1814 at 1822.

<sup>27</sup>*United States Steel Corp. v. FPC*, 175 App. DC 82, 88-89, 533 F.2d 1217, 1223-24, (D.C. Cir., 1976).

<sup>28</sup>Note 7, *supra*.



back obligations incurred on other pipeline systems.

#### REDELIVERY TERMS

Following the reasoning of our decision in *Quanex*, upon which both A-H and Hercules heavily rely,<sup>2</sup> this order does not require that either A-H or Hercules be compensated for any gas it may have received and paid back in excess of what it would have received under the Opinion No. 754 plan. Following our procedure in *Quanex*, we will require Panhandle to file with the Commission a statement for each petitioner showing:

(1) The volume of gas the petitioner received in the form of extraordinary relief during each month it received such relief;

(2) The volume of gas the petitioner paid back during each month it paid back gas received as extraordinary relief;

(3) The extent, if any, that volumes delivered to the petitioner, during months when extraordinary relief was received, exceeded the amounts of gas the petitioner would have been entitled to receive if the interim curtailment plan presented in Opinion No. 754 had been in effect.

Again following our procedure in *Quanex*, since the extraordinary relief volumes granted to A-H and Hercules were to satisfy Priority 3 uses under the 467-B plan, which uses are now Priority 2 under Opinion No. 754, any gas returned to either A-H or Hercules pursuant to this order shall be for Priority 2 uses only. Hence, neither these returned volumes, nor gas which would have been directed to the petitioner's process uses but for the delivery of these returned volumes, shall be used in any priority lower than priority 2.

The improved supply projections contained in Panhandle's September 28, 1978, Form 16 filings indicated sufficient gas to accommodate the return of payback volumes. The volumes to be returned will be less than 0.2% of Panhandle's projected supply for the next twelve months.

To provide A-H and Hercules the maximum flexibility in utilizing the returned gas, Panhandle shall deliver this gas, in addition to entitlements under the Opinion No. 754 plan, as needed during the 24 months following the date this order issues.

#### The Commission finds:

(1) It is in the public interest and consistent with the purposes of the Natural Gas Act to grant A-H and Hercules the relief requested, to the extent indicated in the text of this opinion, and as hereinafter ordered.

<sup>2</sup> Panhandle Eastern Pipeline Company (*Quanex*), Docket No. TC78-2, Order issued December 14, 1977, at 7-8.

(2) Good cause exists to consolidate these proceedings.

(3) Participation by the petitioner to intervene may be in the public interest.

#### The Commission orders:

(A) The petitions for relief filed by A-H and Hercules are granted to the extent indicated above, provided that none of Panhandle's deliveries to A-H and Hercules are used in a priority lower than priority 2 of the Opinion No. 754 curtailment plan.

(B) Panhandle shall file, within sixty days from the date of this order, statements of A-H's and Hercules' accounts as described above.

(C) Docket No. TC78-34 is hereby consolidated with Docket No. RP74-31-24.

(D) GM's petition to intervene is granted subject to the rules and regulations of the Commission: *Provided, however*, that participation shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene: *Provided, further*, that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc. 78-36108 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-81]

SANDLIN OIL CORP.

Notice of Amended Petition for Special Relief

DECEMBER 19, 1978.

Take notice that on September 7, 1978, Sandlin Oil Corporation (Petitioner), 1150 Petroleum Club Building, Denver, Colorado 80202, filed an amended petition for special relief seeking a rate of \$1.30 per Mcf plus Colorado Production Taxes for the sale of gas from a well located in Section 30: C-NE-SE, Township 2 South, Range 63 West, in the Chieftan Field, Adams County, Colorado. Petitioner seeks this rate in order to clean and retrace the well and to install a pumping unit to lift liquids.

Sandlin's original petition for special relief, filed on July 12, 1978, requested a rate of \$1.48 per Mcf for the sale of this gas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance

with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36109 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-94]

SOUTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 19, 1978.

Take notice that on November 30, 1978, Southern Natural Gas Co. (Applicant), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP79-94 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon sixteen miles of 4-inch pipeline between the Beacon Light Station in Lamar County, Ga., and the Thomaston delivery point in Upson County, Ga., and related facilities (4-inch Thomaston line), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the 22 mile 4-inch Thomaston line has become physically deteriorated. Applicant further states that the 4-inch Thomaston line services only the Barnesville delivery point in Upson County, Ga., and that this delivery point can be adequately served through Applicant's other facilities if Applicant replaces approximately six miles of the 4-inch Thomaston line between the Barnesville delivery point and Applicant's Thomaston-Griffin line and loop. Applicant states that construction on this six-mile segment has already begun pursuant to §2.55(b) of the Commission's General Policy and Interpretations and should be completed in 1978.

Accordingly, Applicant requests permission and approval of the abandonment of the 4-inch Thomaston line, except for that portion being replaced.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regula-

tions under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36111 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER76-177, ER76-207, ER76-208, and ER76-210]

SOUTHWESTERN ELECTRIC POWER CO.

Notice of Compliance Filing

DECEMBER 15, 1978.

Take notice that on November 30, 1978, Southwestern Electric Power Co. (SWEPCO) tendered a revised cost of service and amendments to its rate schedule in purported compliance with Commission Opinion No. 28 in the above-captioned dockets.

Any person desiring to be heard or to protest said filing should file comments or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before January 5, 1979. Copies of this filing are on file with the Commis-

sion and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36111 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-111]

TEXAS GAS PIPE LINE CORP.

Notice of Proposed Changes in FERC Gas Tariff

DECEMBER 15, 1978.

Take notice that Texas Gas Pipe Line Corp. (TGPLC), on December 1, 1978, tendered for filing proposed changes in its FERC Gas Tariff First Revised Volumes No. 1 and Original Volume No. 2. The proposed changes would increase revenues, exclusive of purchased gas cost adjustments, from jurisdictional sales and service by \$135,282 based on the 12-month period ending August 31, 1978, as adjusted. TGPLC states that the principal reasons for the proposed rate increases are increased operating expenses partially offset by a lower return allowable because of a reduced rate base and to offset a net operating revenue deficiency.

Copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 27, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are now on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36113 Filed 12-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-97]

TUCSON GAS & ELECTRIC CO.

Notice of Filing

DECEMBER 15, 1978.

Take notice that Tucson Gas & Electric Co. (Tucson) on December 5, 1978, tendered for filing a power sale and interconnection agreement dated November 29, 1978, entitled Tucson-San

Diego Ten Year Power Sale and Interconnection Agreement between Tucson and San Diego Gas & Electric Co. (San Diego). Tucson states that this agreement provides for the sale of power by Tucson to San Diego from both Tucson's system resources and from various generating units owned or to be owned by Tucson. Tucson requests an effective date of March 1, 1979.

Copies of this filing were served upon San Diego, according to Tucson.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 29, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36112 Filed 12-27-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION  
AGENCY

[FRL 1029-5; OPP-503961]

EXPERIMENTAL USE PERMITS

Issuance

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 100-EUP-58. Ciba-Geigy Corporation, Greensboro, North Carolina 27409. This experimental use permit allows the use of a formulation of 500 pounds of the herbicide metolachlor and 400 pounds of the herbicide atrazine on corn to evaluate control of weeds. A total of 250 acres is involved; the program is authorized only in the 48 contiguous states. The experimental use permit is effective from March 1, 1979 to March 1, 1980. Permanent tolerances for residues of the active ingredients in or on corn have been established (40 CFR 180.368 and 180.220). (PM-25, Room: E-301, Telephone: 202/755-2196)



No. 10182-EUP-11. ICI Americas, Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 1,200 pounds of the sanitizer poly (hexamethylene biguanide hydrochloride) in 756,394 gallons of pool water in 11 swimming pools to evaluate control of bacteria. The program is authorized only in the States of Florida, Pennsylvania, and Tennessee. The program is effective from December 4, 1978 to December 4, 1979. (PM-32, Room: E-321, Telephone: 202/755-9040)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: December 19, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

(FR Doc. 78-36032 Filed 12-28-78; 8:45 am)

[6560-01-M]

[FRL 1029-4; PPT-34]

#### PESTICIDE PROGRAMS

##### Filing of Food Additive Petition

ICI Americas Inc., Concord Pike & New Murphy Road, Wilmington, DE 19897, has submitted a petition (FAP 9H5201) to the Environmental Protection Agency (EPA) which proposes that 21 CFR 193 be amended by establishing a regulation permitting the use of the insecticide pirimiphos methyl (O-[2-diethylamino]-6-methyl-4-pyrimidinyl] O, O-dimethyl phosphorothioate) in a proposed experimental program involving the application of the insecticide to stored peanuts with a tolerance limitation of 50.0 parts per million (ppm) on the commodity peanut oil. Notice of this submission is given pursuant to the provisions of section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA,

Rm. 401, East Tower, 401 M St., SW, Washington DC 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at 202/755-9315. Written comments should bear a notation indicating the petition number.

Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: December 19, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

(FR Doc. 78-36033 Filed 12-28-78; 8:45 am)

[6560-01-M]

[FRL 1029-3; Opp-301561]

#### PESTICIDE PROGRAMS

##### Receipt of Application To Register Pesticide Product Containing New Active Ingredient

Ventron Corp., Beverly, MA 01915, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product VINYZENE SB-129 (EPA File Symbol 2829-RR1), containing 12.5% of the active ingredient N-(2-methyl-1-naphthyl)maleimide which has not been included in any previously registered pesticide product. The application proposes that the application be classified for general use as an antimicrobial for plastic compounds.

Notice of receipt of this application does not indicate a decision by the Agency of the application. Interested persons are invited to submit written comments on this application to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington DC 20460. The comments must be received within 30 days from the date of publication of this notice in the FEDERAL REGISTER and should bear a notation indicating the EPA File Symbol "2829-RR1". Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application and the data submitted should be directed to Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Pro-

grams, at the above address or by telephone at 202/426-2454. The label furnished by Ventron Corp., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of this application to register VINYZENE SB-129 will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: December 19, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

(FR Doc. 78-36034 Filed 12-28-78; 8:45 am)

[6560-01-M]

[FRL 1030-4]

#### PROPOSED DETERMINATION UNDER THE "LOCAL OR REGIONAL COAL" AMENDMENT OF THE CLEAN AIR ACT

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of proposed determination under subsection 125(a) of the Clean Air Act that action may be necessary to prevent or minimize significant local or regional economic disruption and unemployment in Ohio.

SUMMARY: The Environmental Protection Agency (EPA) proposes to make a determination pursuant to subsection 125(a) of the Clean Air Act as amended in 1977 (42 U.S.C. 7425(a)) that action may be necessary under subsection 125(b) (42 U.S.C. 7425(b)) to prevent or minimize the significant local or regional economic disruption and unemployment that would result in Ohio from use by major fuel burning stationary sources operated by Ohio utilities of coal which is not locally or regionally available. Simultaneously and as a condition of any proposed subsection 125(b) rules or orders, rules or orders pursuant to subsection 125(c) (42 U.S.C. 7425(c)) may also be proposed.

This proposed determination under subsection 125(a) is based on findings of public hearings held in Ohio cities in August 1978; written comments sub-

mitted to EPA by interested individuals and organizations; information submitted to EPA by Ohio utilities pursuant to requirements of the federally promulgated Ohio sulfur dioxide implementation plan of August 27, 1976 (41 FR 36324) as amended May 31, 1977 (42 FR 27588) and a request for information issued by EPA pursuant to section 114 of the Act (74 U.S.C. 7414); and finally, results of EPA's economic and coal market analysis studies conducted in Ohio.

The proposed determination may result in the proposal of rules or orders or other administrative action under subsections 125(b) and 125(c) of the Act. Such rules, orders or other administrative action initiated would be applicable to specific Ohio utilities and would: (1) prohibit use of quantities of fuels other than locally or regionally available coal or coal derivatives to comply with Ohio sulfur dioxide, regulations, (2) require long-term contracts for supplies of regionally available coal or coal derivatives, (3) require contracts for the acquisition of any additional means of emission limitation that may be necessary to comply with the Ohio sulfur dioxide regulations, and (4) require compliance with such schedules and timetables as may be necessary to meet the requirements of the Ohio sulfur dioxide regulations.

This notice solicits written comment on the proposed determination under subsection 125(a) as well as the technical reports used as the basis for the EPA findings of economic disruption and unemployment and establishes a public hearing for public participation in this proposed determination. Written comments related to the issues defined in EPA's notice of proceedings of July 13, 1978 (43 FR 30113) are also solicited, particularly comments and views concerning the interpretation of the "local or regional coal" terms as stated in section 125 of the Act.

A final determination under subsection 125(a) will be made following the public hearing and close of the comment period. Rules or orders or other administrative action under subsections 125(b) and (c) found to be necessary will be proposed simultaneously with or subsequent to the final determination.

DATES: (1) The public comment period for this proposed determination under subsection 125(a) will remain open until February 26, 1979. A final determination will be issued by EPA following the close of the comment period. Written comments already received by EPA concerning the "local or regional coal" proceedings in Ohio under section 125 of the Act will be considered as comments in this proceeding.

(2) A public hearing will be held in Columbus, Ohio, January 30, 1979, to allow public participation in this proposed determination. The hearing will commence at 9:00 am in the Neil House Motor Hotel, 41 S. High Street, Columbus, Ohio 43215. Requests for appearance at the public hearing should be submitted to EPA by January 25, 1979.

ADDRESSES: All data, views or arguments which are submitted in writing to EPA, will be considered before a final subsection 125(a) determination is made. Such comments and information as well as requests for appearance at the public hearing should be sent to: Office of Enforcement, Division of Stationary Source Enforcement, EN-341, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: F. J. Biros.

Copies of all comments received as well as data and information including the August 1978 hearings transcripts and written comments used as a basis for this determination, and any subsequent administrative action will be available for public inspection during regular business hours at the same locations indicated in the Notice of Proceedings published July 13, 1978 (43 FR 30113).

#### FOR FURTHER INFORMATION CONTACT:

F. J. Biros, Chief, Technical Support Branch, Division of Stationary Source Enforcement, EN-341, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; Telephone: (202) 755-2560.

SUPPLEMENTARY INFORMATION: On July 13, 1978, EPA published in the FEDERAL REGISTER a notice of proceedings under the "local or regional coal" amendment, section 125 of the Clean Air Act with respect to eight fuel burning electric utilities in Ohio (43 FR 30113). The proceedings were instituted in response to petitions received by EPA from the United Mine Workers of America, District 6 and the Ohio Mining and Reclamation Association to initiate action under the "local or regional coal" amendment. Senator Metzenbaum and Governor Rhodes of the State of Ohio later joined in the petitions.

Subsection 125(a) of the Act authorizes the Administrator of EPA, or the President (or his designee), after notice and opportunity for public hearing, to determine whether action under subsection 125(b) is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by any major fuel burning stationary source of fuels other than locally or regionally available coal or coal derivatives, petroleum products, natural gas or any combina-

tion of such fuels to comply with a State's implementation plan requirements. Such action may prohibit such source from using other than locally or regionally available coal or coal derivatives and may include requirements that the source enter into long-term contracts for supplies of regionally available coal or coal derivatives and that such source enter into contracts to acquire additional means of limiting emissions, including stack gas scrubbing, to comply with the requirements of the plan. The source may also be required to comply with such schedules and timetables as are necessary to meet the plan requirements.

The petitions alleged that compliance with the Ohio sulfur dioxide plan by Ohio utility power plants would result in large scale switching from high sulfur coal supplies obtained predominantly from Ohio mines to low sulfur coal supplies which are not locally or regionally available. The petitions further alleged that fuel switching by the Ohio utilities would possibly result in significant local or regional economic disruption or unemployment.

In response to the petitions, EPA conducted public hearings in Cleveland, Ohio, on August 15 and 16, 1978 and in St. Clairsville, Ohio, on August 22 and 23, 1978. In addition, written comments, views, and information were solicited on several key issues, including the extent of any actual or potential local or regional economic disruption or unemployment that would occur if major fuel burning stationary sources in Ohio were allowed to comply with the sulfur dioxide emission limitations through the use of fuels other than locally or regionally available coal or coal derivatives in the operation of their facilities (43 FR 30113). The public comment period and hearing record closed October 16, 1978.

On June 12, 1978, EPA requested certain information from the major Ohio utilities named in the July 13, 1978, notice on the section 125 proceedings. Under section 114 of the Clean Air Act, EPA requested information on the past, present and projected coal use plans of the Ohio utilities for complying with the sulfur dioxide regulations. In addition, EPA retained four engineering and economic consultant firms to analyze this and other information and to predict whether and to what extent economic disruption or unemployment is likely to result from use of fuel other than locally or regionally available coal or coal derivatives. Based on this information and analysis, EPA believes that sufficient information has been obtained to propose this determination under subsection 125(a) of the Act. This proposed determination is



based on a finding of significant projected curtailments in use of Ohio high sulfur coal by Ohio utilities which would result in significant local or regional economic disruption and unemployment principally in Ohio's coal producing southeastern counties. The projected curtailment is due to proposed plans by the Ohio utilities to comply with the sulfur dioxide regulations.

#### PROJECTED CURTAILMENT IN OHIO COAL USE

The total coal market impact of the projected compliance coal use plans of the Ohio utilities which are the subject of these proceedings is set forth in Appendix A. The curtailment data were calculated from information supplied by the utilities as to their plans to meet the Clean Air Act sulfur dioxide plan for Ohio. The utilities supplied this information to EPA in response to the sulfur dioxide plan, in testimony at the public hearings, in responses to EPA's letters of inquiry under Section 114 of the Clean Air Act, in Form 423 coal use data submissions to the Federal Energy Regulatory Commission, and in other communications directly to EPA staff and consultants.

The estimated loss in Ohio coal production during the period 1977-1980, resulting from the shift to low sulfur compliance coal by fourteen major Ohio power plants is 15.8 million tons per year. This loss in production would result directly from switches to low sulfur coal supplies by the Ohio power plants as a result of their attempts to comply with the Ohio sulfur dioxide regulations. The replacement coal would be Central Appalachian coal predominantly from eastern Kentucky and central and southern West Virginia.

In the context of Ohio's total coal production of 46.9 million tons per year, the projected curtailment represents a 33.7% drop in production in Ohio's coal mining industry. Furthermore, since Ohio utilities purchased 32.3 million tons of coal from Ohio's mines in 1977, the curtailment amounts to 48.9% of Ohio utility coal use (Appendix B).

The corresponding projected curtailment in the Ohio power plants' use of high sulfur coal from neighboring states, primarily West Virginia and Pennsylvania is estimated to be 1.32 million tons per year. The predominant impact of the projected shift in use of coal in Ohio, therefore, is within Ohio's 25 coal producing southeastern counties. The 1980 curtailment in Ohio utility consumption of high sulfur coal from neighboring states expressed as a percentage of total 1977 production ranges from 0.1% for Indi-

ana to 0.7% for Pennsylvania and West Virginia, to 1.0% for Maryland.

EPA also examined shifts in demand for Ohio coal by electric utility plants in neighboring states. This analysis showed that the projected net curtailment in Ohio coal production over the time period of EPA's analysis may be slightly less than 15.8 million tons per year. If planned increases in Ohio coal use by certain Ohio power plants occur by 1979, the coal production losses could be reduced to 14.1 million tons per year. On the other hand, projected changes in supply and demand for Ohio coal by power plants in other states, some of which are owned by Ohio utilities, would increase this reduced curtailment slightly, resulting in a net estimated loss of 14.4 million tons annually in 1980. Although losses would be significant because of contracts terminated or not renewed by power plants, primarily in Michigan, that are switching to other fuels to meet environmental regulations, the losses would be very nearly offset by new contracts from power plants in other states such as Pennsylvania. The net loss resulting from demand shifts by utilities in neighboring states is estimated to be 0.3 million tons per year. Therefore, taking all known coal use plans into account, the net projected curtailment in Ohio coal production is reduced to 14.4 million tons per year. EPA has determined that even this reduced coal production loss (30.7%) would represent a significant impact on Ohio's coal mining industry.

For purposes of this proposed determination, however, the curtailment estimate of 15.8 million tons per year was used as the basis of the economic impact analysis discussed below. This figure represents the projected curtailment resulting directly from the plans of the Ohio power plants to comply with Ohio's sulfur dioxide regulations by using low sulfur coal.

Based on the findings of the analyses of the low sulfur coal market in Central Appalachia conducted by EPA and made available for public review and comment on July 31, 1978 (43 FR 33312), alternative markets for Ohio coal are not likely to be found before the mid to late 1980's time period when new power plants subject to EPA's New Source Performance Standards are constructed in the late 1980's and such plants could purchase Ohio high sulfur coal for use with stack gas scrubbers.

Finally, the projected curtailments may be affected by pending review by EPA of the emission standards applicable to several of the Ohio power plants under the remands of the Court of Appeals for the Sixth Circuit, *Cincinnati Gas and Electric Co. v. EPA*, 578 F.2d 660,666 (6th Cir. 1978) and petitions for review of plan provisions

submitted to EPA by certain Ohio utilities. If these proceedings result in revisions to the plan, the actual coal curtailment may be greater or lesser than projected in EPA's current studies.

#### PROJECTED EMPLOYMENT IMPACTS

As indicated in Appendix C, EPA estimates that the projected curtailment in Ohio coal production of 15.8 million tons per year due to Ohio power plants switching to low sulfur coal in order to attain compliance with the Ohio sulfur dioxide regulations by the end of 1979 will result in an estimated loss of 5,270 mining jobs in Ohio's southeastern coal producing counties. This represents approximately 35% of Ohio's total coal miner work force of 15,200 active miners in 1977. The miner job displacement data were estimated by tracing supplies of Ohio coal expected to be terminated by Ohio utilities to individual mines producing that coal. The job loss estimates also take into account differences in employment figures associated with surface and deep mine coal producing operations.

During the 1977 to 1980 time period, other changes in mine employment will have occurred. As a result of anticipated increases in Ohio coal demand by some Ohio utilities for reasons other than compliance with the State's sulfur dioxide plan requirements, approximately 1,070 coal mining jobs could be created. These jobs are expected to be created and filled before the employment losses associated with the switch to low sulfur coal by Ohio powerplants, and therefore, they are not expected to offset the losses due to the switch to low sulfur coal. A later gain, however, in coal mining employment resulting from increases in Ohio coal demand by powerplants in Pennsylvania is expected to occur. EPA estimates this gain will amount to 680 jobs. In addition, a loss of 1,360 coal mining jobs is expected as a result of various Michigan utilities also shifting from Ohio coal to low sulfur coal from other States. Taking these additional changes in coal mining employment in Ohio into account results in an estimated net decrease in employment of 4,880 jobs compared to the 1977 level. This represents about 32% of Ohio's 1977 coal mining jobs. However, if the timing of the employment gains and losses is considered, the net total decrease after early 1979 is expected to be 5,950 jobs. This represents about 39% of Ohio's 1977 coal mining employment. Because of the lack of growth in other sectors of the southeastern Ohio economy, there is little likelihood that the economy could absorb the coal miners and other workers that would be displaced by the shift to out-of-State coal.

Because an estimated 5,270 jobs would be lost directly due to the projected switches to low-sulfur coal by Ohio powerplants, this figure was used to project unemployment rates and estimate related job losses in Ohio using economic modeling techniques.

Coal mining unemployment would increase significantly in the southeastern Ohio counties hardest hit particularly Belmont, Monroe, Harrison, Jefferson and Tuscarawas Counties. Appendix D sets out the estimated loss in coal production and corresponding reduction in coal miner employment estimated by EPA for five individual southeastern Ohio counties. For example, in Belmont and Monroe Counties, 2,310 coal mining jobs, corresponding to a 41.7% reduction in the two County coal mining employment base would be lost. In Harrison County, 1,240 coal mining jobs would be lost representing a 51.5% reduction in County coal mining employment. The corresponding percent reduction in coal mining employment for Jefferson and Tuscarawas Counties is 56.0% and 63.3%, respectively. For Ohio's remaining coal producing counties, the percent reduction in coal mining employment would be 17%.

As a result of the estimated 5,270 coal mining jobs lost, jobs in other employment sectors in Ohio would, of course, also be affected (Appendix C). Job losses in mine supply industries are estimated to range from 3,170 to 3,530. Losses in industries dependent on household spending, e.g., household services, rentals, wholesale and retail sales, production industries, etc., are estimated to range from 4,740 to 6,500 jobs. The loss of jobs in other occupations, termed a "ripple effect," was calculated on the basis of U.S. Department of Commerce and U.S. Department of Agriculture economic models modified for the Ohio economy. The total employment loss attributable to the projected Ohio utility coal switch, therefore, could amount to as many as 13,180 to 15,300 jobs. This total represents approximately 0.3% of Ohio's total State employment. The effect on certain Ohio southeastern counties, where a major industry is coal mining, would be especially severe.

Appendix E details the projected total employment impacts for four southeastern Ohio counties. For example, total jobs lost in the Belmont/Monroe Counties area is projected to range from 3,995 to 4,435. This represents 10.0 to 11.1% of the total labor force in the two counties. Harrison County would be hardest hit with 25.7 to 28.3% of the labor force affected. Unemployment rates for Belmont/Monroe Counties would more than double and for Harrison County would increase at least four-fold. For the

four county area, 7.9 to 8.7% of the total labor force would be affected over and above the pre-impact unemployment rate of approximately 6.8%. If all these workers remained in the areas without jobs, the total unemployment rate would reach 15% for the four contiguous counties with a total civilian labor force of more than 85,000 people.

#### PROJECTED ECONOMIC IMPACT

Direct wage losses due to the lay off of 5,270 miners are estimated by EPA to be \$90 million annually. Job losses in the non-mining sector would add \$105 to \$125 million annually in lost wages. The total annual income loss in Ohio would therefore be \$195-\$215 million directly resulting from the projected Ohio utility coal switch. Approximately \$36-\$41 million in unemployment benefits would have to be paid. This amount represents a 10% increase in the State's current outlay for unemployment benefits. After 26 weeks such benefits would cease and welfare benefits would begin for those who would be eligible.

Due to a multiplier effect, whereby the reduction in coal output and associated employment effects are magnified throughout Ohio's economy, the total loss in the annual gross state product would be \$400 million or greater. Although the decline in business activity represents only up to 0.4% of Ohio's current annual gross product, the effects of such a loss would be severely felt in Ohio's coal producing counties. The data in Appendix C summarize the local and regional economic impacts.

#### CONCLUSION AND ACTION

In consideration of the foregoing, EPA proposes to determine under subsection 125(a) of the Clean Air Act (42 U.S.C. 7425(a)) that action may be necessary under subsections 125(b) and (c) (42 U.S.C. 7425(b) and (c)) to prevent or minimize the significant local or regional economic disruption and unemployment that would occur as a result of the projected use by major fuel burning stationary sources operated by Ohio utilities of coal or coal derivatives not locally or regionally available. Proposed rules or orders under subsection 125(b) may prohibit certain Ohio power plants from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements.

According to the provisions of subsection 125(b) such rules or orders may only be issued after the final cost to the consumer of such an action is taken into account. EPA is conducting studies to define the consumer impact of action under section 125.

Under subsection 125(c), certain Ohio power plants may be required to enter into long-term contracts for supplies of regionally available coal or coal derivatives which would prevent or minimize the curtailments in Ohio coal production projected by this proposed determination. In such a case, the power plants may also be required to acquire any additional means of emission limitation that may be necessary to comply with the requirements of the Ohio sulfur dioxide regulations while using such coal or coal derivatives as fuels. With respect to the Ohio power plants that have projected the coal switches used as a basis for this proposed determination, EPA has examined the technical feasibility and costs of several such means of additional emission limitation including stack gas scrubbing, coal washing, coal blending and combinations of these alternative compliance strategies. Notice of Availability of the report detailing the results of this study was issued by EPA on November 7, 1978 (43 FR 51842).

This proposed determination establishes a comment period commencing with the date of publication and continuing for 60 days. In addition, a public hearing will be conducted in Columbus, Ohio, on January 30, 1979, permitting public participation in this proposed determination. The time and location of the public hearing is indicated above.

Comments and testimony will be received by EPA concerning all the issues defined in the July 13, 1978, notice of proceedings. EPA has received many written comments and heard testimony concerning these issues during the initial comment period and the public hearings held in Ohio in August, 1978. The focus of the presently announced public hearing, therefore, will be the information developed as a basis for this proposed determination which is described in this notice and the two technical reports issued simultaneously and described below, and the issues associated with EPA's future course of action under section 125.

The Ohio utilities affected by any rules, orders or other administrative action proposed under subsections 125(b) and (c) will be specified at the time any such action is proposed. Such proposed administrative action, if found to be necessary, will be published following or simultaneously with the final determination under subsection 125(a). In the interim, EPA will make available for public review and comment reports of all studies conducted which are relevant to these proceedings. These studies include the engineering assessment of alternative compliance strategies for selected Ohio fuel burning power plants and



the Central Appalachian low sulfur coal supply and demand analysis already issued for public review and comment. Two reports described below are being made available simultaneously with this notice. Yet to be issued for public review and comment are an additional coal market study assessing the costs of Ohio and Central Appalachian coal and transportation impacts of the projected Ohio coal curtailments, and an economic analysis, including cost to the consumer, of the projected coal use plans as well as the alternative compliance strategies for selected Ohio fuel burning power plants. Results of these studies will serve as a basis for any proposed EPA action under subsections 125(b) and 125(c) affecting individual power plants. All pending reports, when completed, will be made available for public comment with a minimum 30-day review and comment period. A timely notice in the FEDERAL REGISTER

will indicate the availability of documents, requested deadline dates for comments, and other necessary information. Public availability of all reports and the closing of the comment periods for the reports are expected to occur by March 1, 1979. Since a final determination under subsection 125(a) is expected to be issued by approximately this date, any proposed action under subsections 125(b) and 125(c) will be announced by EPA in the FEDERAL REGISTER following this date.

The complete technical background for this proposed determination may be found in two documents which are hereby made available for public review and comment. EPA will consider all comments received within the 60 day comment period established for this proposed determination. The reports are entitled: "Regional Economic Impact Analysis: Ohio Section 125 Study," and "Draft Report: Potential Impacts on the Ohio Coal Market:

Ohio Utility Compliance with Applicable Air Emission Limitations: Section 125 Study."

Copies of the two reports have been distributed to organizations and individuals who are known to have an interest in the Ohio section 125 proceedings. Copies of the reports are also available for public inspection and copying during normal business hours at the library repository locations indicated in 43 FR 30113.

Written comments should be submitted to the address indicated in this notice. Copies of all comments received and responses thereto will be placed in the above referenced locations following close of the comment period.

(Section 125 of the Clean Air Act as amended August 7, 1977, 42 U.S.C. 7425.)

Issued in Washington, D.C., on December 19, 1978.

DOUGLAS M. COSTLE,  
Administrator.

[6560-01-C]

NOTICES

## APPENDIX A

Projected Curtailment in High Sulfur Coal Production  
Due to Fuel Switching by Ohio Utilities

| State         | 1977 Coal<br>Production<br>(millions of tons) <sup>1</sup> | 1980 Curtailment <sup>2</sup><br>(millions of tons) | 1980 Curtailment<br>Percent of 1977<br>Production |
|---------------|------------------------------------------------------------|-----------------------------------------------------|---------------------------------------------------|
| Ohio          | 46.9                                                       | 15.8                                                | 33.7%                                             |
| Indiana       | 28.0                                                       | 0.02                                                | 0.1%                                              |
| Pennsylvania  | 83.2                                                       | 0.59                                                | 0.7%                                              |
| W. Kentucky   | 50.8                                                       | 0.0                                                 | 0.0%                                              |
| West Virginia | 95.4                                                       | 0.68                                                | 0.7%                                              |
| Maryland      | 3.3                                                        | 0.03                                                | 1.0%                                              |
| Total         | 307.6                                                      | 17.12                                               |                                                   |

<sup>1</sup> Coal production data obtained from Department of Energy, Energy Data Reports, Weekly Coal Data Report #33, May 10, 1978.

<sup>2</sup> Coal curtailment data obtained from Ohio utilities through public hearing testimony, responses to EPA Section 114 letters of inquiry, Ohio SO<sub>2</sub> plan submissions, and other data submitted to EPA.



## APPENDIX B

Projected Coal Market Impacts of Fuel  
Switching By Coal Utilities

|                                                        |                                |
|--------------------------------------------------------|--------------------------------|
| Annual Ohio Coal Production (1977)                     | 46.9 million tons              |
| Annual Ohio Utility Use of<br>Ohio Coal (1977)         | 32.3 million tons <sup>1</sup> |
| Curtailment Due to Fuel Switching<br>by Ohio Utilities | 15.8 million tons              |
| Reduction in Ohio Coal Use<br>by Ohio Utilities        | 48.9%                          |
| Reduction in Total Ohio<br>Coal Production             | 33.7%                          |

<sup>1</sup> Ohio utility Ohio coal use data obtained from National Coal Association, 1978 Steam Plant Factors Report which summarizes Form 423 submissions by electric utilities to the Federal Energy Regulatory Commission.

## APPENDIX C

Projected Employment and Economic Impacts of Fuel  
Switching by Ohio Utilities

|                                                                                                                                                      |                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Number of Ohio Coal Mining Jobs (1977) <sup>1</sup>                                                                                                  | 15,200                   |
| Ohio Coal Mining Jobs Lost by 1980 Due to<br>Projected Coal Production Curtailments <sup>2</sup>                                                     | 5,270                    |
| Percent of Total                                                                                                                                     | 34.7%                    |
| Jobs Lost in Coal Mine Supply Industries <sup>3</sup>                                                                                                | 3,170 - 3,530            |
| Jobs Lost in Industries Related to Household<br>Spending (Household Services, Rentals,<br>Wholesale and Retail Sales, Production, Etc.) <sup>3</sup> | 4,740 - 6,500            |
| Total Jobs Lost                                                                                                                                      | 13,180 - 15,300          |
| Total Annual Wages Lost <sup>4</sup>                                                                                                                 | \$195 - \$215 million    |
| Total Unemployment Benefit<br>Payments                                                                                                               | \$36 - \$41 million      |
| Total Annual Loss to Ohio<br>Gross State Product                                                                                                     | \$400 million or greater |

<sup>1</sup> Ohio coal mine employment data were obtained from the Ohio Department of Industrial Relations, Division of Mines Annual Report, 1977.

<sup>2</sup> The projected coal mine unemployment data were developed by tracing individual utility coal curtailments to expected employment losses at surviving mines from information provided by the Ohio utilities and Ohio coal mine operators. Where this was not possible, employment impacts were estimated by analysis of coal mine employment and production data found in the 1977 Division of Mines Annual Report.

<sup>3</sup> Job losses in the non-mining sector and impacts on the Ohio gross annual product were estimated by using Department of Commerce RIMS and Department of Agriculture RIMS economic models.

<sup>4</sup> Wage loss and unemployment benefit data were obtained from the Ohio Bureau of Employment Services.



## APPENDIX D

Projected Coal Curtailment and Coal Mining  
Unemployment Impacts in Selected Ohio Counties  
of Fuel Switching by Ohio Utilities

| County                                       | 1980 Curtailment<br>(millions of tons) | 1980 Coal Mining<br>Jobs Lost | Percent Reduction<br>in 1977 County Coal<br>Mining Employment |
|----------------------------------------------|----------------------------------------|-------------------------------|---------------------------------------------------------------|
| Belmont/Monroe                               | 6.21                                   | 2,310                         | 41.7%                                                         |
| Harrison                                     | 2.79                                   | 1,240                         | 51.5%                                                         |
| Jefferson                                    | 1.26                                   | 470                           | 56.0%                                                         |
| Tuscarawas                                   | 0.95                                   | 190                           | 63.3%                                                         |
| Remaining SE Ohio<br>Coal Producing Counties | 4.59                                   | 1,060                         | 17%                                                           |
| Total                                        | 15.80                                  | 5,270                         |                                                               |

## APPENDIX E

Projected Total Unemployment Impacts in Selected Ohio Counties  
of Fuel Switching by Ohio Utilities

| County            | Total<br>Labor Force <sup>1</sup> | Percent Present<br>Unemployment Rate <sup>2</sup> | 1980 Coal Mining<br>Jobs Lost | 1980 Total County<br>Jobs Lost <sup>3</sup> | Percent Total<br>Labor Force<br>Affected |
|-------------------|-----------------------------------|---------------------------------------------------|-------------------------------|---------------------------------------------|------------------------------------------|
| Belmont/Monroe    | 39,906                            | 7.0%                                              | 2,310                         | 3,995-4,435                                 | 10.0-11.1%                               |
| Harrison          | 7,919                             | 6.1%                                              | 1,240                         | 2,035-2,245                                 | 25.7-28.3%                               |
| Jefferson         | 38,022                            | 6.7%                                              | 470                           | 740-810                                     | 1.9-2.1%                                 |
| Four County Total | 85,847                            | 6.9%                                              | 4,020                         | 6,770-7,490                                 | 7.9-8.7%                                 |

1 U.S. Department of Labor, 1977.

2 U.S. Department of Labor Statistics, April, 1977 to March, 1978.

3 Estimated using the MHS and PHS economic models.

[PR Doc. 78-36022 Filed 12-27-78; 8:45 am]



(FRL 1031-6)

TOTAL MAXIMUM DAILY LOADS UNDER  
CLEAN WATER ACTAGENCY: Environmental Protection  
Agency.

ACTION: Notice.

**SUMMARY:** The purpose of this notice is to finalize EPA's identification of pollutants suitable for total maximum daily load calculations pursuant to the Clean Water Act. EPA proposed an identification for public comment on September 20, 1978. This identification is being issued pursuant to the Act's requirement that EPA develop and publish information "on and the identification of pollutants suitable for maximum daily load measurements correlated with the achievement of water quality objectives." EPA is identifying all pollutants, under proper technical conditions, as being suitable for the calculation of total maximum daily loads. Within 180 days after publication of this notice, the Act requires each state to submit its first identification of waters requiring total maximum daily loads and its first load calculations.

**DATE:** This identification is effective December 28, 1978.

FOR FURTHER INFORMATION  
CONTACT:

Tim S. Stuart, Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-245-3042.

**SUPPLEMENTARY INFORMATION:** On September 20, 1978, EPA published a notice in the *FEDERAL REGISTER* (43 FR 42303) proposing an identification of pollutants suitable for total maximum daily load (TMDL) calculations pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.). The purpose of today's notice is to finalize EPA's identification of pollutants suitable for TMDL calculation. This notice is issued pursuant to section 304(a)(2)(D) of the Act. (33 U.S.C. § 1314(a)(2)(D).)

The legal basis, proposed identification and information on calculating TMDL's, priority ranking and content of State submissions were set out in the proposed notice. Interested persons were invited to submit written comments on the identification and information within 45 days from the date of publication. EPA received comments from 21 respondents including four State agencies, three local governmental organizations, 11 private concerns (industrial/consulting), and two attorneys. These written comments are available for public inspection at EPA headquarters.

EPA has carefully considered all of the comments received and a discussion of the significant comments with the Agency's response thereto follows. The discussion is based on the format of the original notice.

## (A) RESPONSES TO COMMENTS

## BACKGROUND

(1) Two State water quality agencies suggested that both past and present State and Federal water quality programs were sufficient to accomplish the purposes of the Act, and that wasteload allocation and other modeling efforts that had already occurred or that were already scheduled were sufficient. In their view, additional resources and efforts in this area would be misdirected.

Section 304(a)(2)(d) requires that EPA identify pollutants suitable for TMDL calculation. EPA is currently under an order of the United States District Court for the District of Columbia to comply with section 304(a)(2)(D). EPA is aware of ongoing programs, and therefore, the proposed identification of pollutants is not intended to require States to devote additional resources to TMDL and wasteload allocation development. Results of past or ongoing efforts, where adequate, can be submitted to initially satisfy the TMDL requirement. Specifics on timing, content and level of detail of future TMDL's will be negotiated by each State and the appropriate EPA Regional Office. EPA also believes that implementation and use of TMDL's can also serve as a tool for developing equitable and technically sound wasteload allocations.

(2) One commenter suggested that EPA's reference to the existing water quality management (WQM) regulations was not meaningful, since they will soon be superseded.

The proposed water quality management regulations also require the development of TMDL's as part of the water quality management planning process (40 CFR 35.1519, see 43 FR 40750, September 12, 1978).

(3) One commenter suggested that the court order pursuant to which EPA was proposing to identify pollutants suitable for TMDL calculation was mandatory only for the Patuxent River Basin.

The court order was not limited in its effect to the Patuxent River Basin. In any case, EPA believes that its identification should be made on a nationwide basis to encourage uniformity among the States and EPA regions for implementation of the TMDL program.

## PROPOSED IDENTIFICATION AND IMPLEMENTATION INFORMATION—IDENTIFICATION

(1) Many commenters suggested that the phrase "under proper technical conditions" should be clarified.

"Proper technical conditions" refers to the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL. These elements will vary in their level of sophistication depending on the nature of the pollutant and characteristics of the segment in question. They must be determined on a case-by-case basis. It is impossible to detail the proper technical conditions for all pollutants in all situations. Moreover, EPA does not want to preclude States from developing their own approaches.

(2) One commenter suggested that EPA's proposed identification evades the intent of § 304(a)(2)(D) since no specific identification of pollutants is made.

The statute does not require the Agency to specify by name every pollutant suitable for TMDL calculation. Since EPA's identification includes all pollutants, it would be unreasonable and unnecessary to list all chemicals and other pollutants by name.

(3) One commenter recommended that only actual pollutants be identified and not the parameters which merely indicate the presence of pollutants without identifying them.

EPA believes that the determination of TMDL's for parameters which indicate the presence of pollutants (e.g., total dissolved solids, suspended solids) can be useful in certain situations and should not be excluded from consideration.

## INFORMATION—CALCULATION OF TMDL'S

(1) One comment requested a definition of TMDL.

A TMDL can generally be defined as the pollutant loading for a segment of water that results in an ambient concentration equal to the numerical concentration limit required for that pollutant by the numerical or narrative criteria in the water quality standards.

(2) A few commenters felt that some pollutants are not suitable for TMDL calculations because adequate analytical methods or modeling techniques do not yet exist.

The Agency believes that TMDL's can be determined for any pollutant. EPA recognizes that proper techniques do not exist for all pollutants in all situations; however, proper techniques can be developed for any pollutant given adequate resources. A limited list of specific pollutants would be too restrictive because it might preclude the States from determining TMDL's for other pollutants for

which proper techniques can be developed.

(3) A number of commenters stated that the notice does not provide adequate technical information and guidance for the States to use in the calculation of TMDL's for specific pollutants, and suggested that EPA provide additional guidance on this subject.

Most States already have some experience with the wasteload allocation process, and generally have the knowledge needed to determine the proper techniques and conditions for TMDL's. Those States which do not have the knowledge have easy access to it in the technical literature, EPA guidance, and contractor expertise. EPA recognizes the desirability of additional technical guidance for the calculation of TMDL's and is developing such guidance.

(4) Several commenters felt that TMDL's could not be developed in the absence of numerical criteria in water quality standards.

Where numerical water quality criteria do not now exist, States may use information published by EPA under section 304(a) of the Act (e.g., "Red Book" criteria) or may use available information in the technical literature for developing TMDL's.

(5) A few commenters expressed dissatisfaction over how conservative and nonconservative pollutants are defined, and how conservative TMDL's (C-TMDL's) are distinguished from nonconservative TMDL's (N-TMDL's). Two commenters felt that the definitions of conservative and nonconservative pollutants are not flexible enough to allow for variations in locations and conditions which affect the behavior of many pollutants. One commenter believed that the manner in which N-TMDL is discussed does not adequately distinguish it from C-TMDL, and suggested that the major difference between the two classes of pollutants is that the N-TMDL is affected by chemical and biological processes in the aquatic environment and not just by flow or volume.

As noted above, a TMDL can be defined as the pollutant loading for a segment of water that results in an ambient concentration equal to the numerical concentration limit required for that pollutant by the numerical or narrative criteria in the water quality standards. The means for determining the TMDL will depend on the classification of the given pollutant (i.e., conservative or nonconservative). As indicated in the September notice, EPA recognizes that the dividing line between conservative and nonconservative pollutants is not sharp and the classification of a given pollutant may vary according to the situation (e.g., the location of discharges and other conditions in the segment). Since

TMDL calculations are made on a case-by-case basis, the States are free to use their judgment in classifying a pollutant as either conservative or nonconservative, based on its characteristics of the segment in question. Also, EPA recognizes that N-TMDL's are affected by a number of factors including chemical and biological processes in the aquatic environment, and the States will be free to use their judgment in weighing these factors.

(6) One commenter questioned the applicability of "Red Book" criteria to local conditions.

This issue was also raised in EPA's advanced notice of proposed rulemaking for water quality standards (43 FR 29588, July 10, 1978), and is now under consideration by EPA.

## INFORMATION—PRIORITY RANKING

(1) One commenter suggested that we use the criteria contained in the existing WQM regulation (40 CFR 130/131) to determine priorities, rather than the criteria in the proposal.

Currently, 40 CFR 130.20(a)(2) simply requires a ranking of segments based on a statewide assessment of water quality problems. The criteria in the notice provides more guidance. EPA feels that more detailed guidance is necessary because this identification triggers the States' requirements to develop TMDL's.

(2) Another commenter stated that EPA's proposed criteria for determining priorities were not necessarily conducive to environmental improvement, and suggested that efforts be concentrated on establishing water quality standards.

This notice is not intended to establish, on a nationwide basis, the appropriate level of resources to be devoted to water quality standards revisions but was intended to address the development of TMDL's as required by the Act.

(3) One commenter suggested that priority rankings should reflect availability of State resources.

EPA agrees that resources must be considered in deciding where to develop TMDL's. The proposed water quality management regulations provide for this consideration (See 40 CFR 35.1515-2 State Strategy).

(4) Another commenter proposed that projected costs and benefits of attaining water quality standards be considered in ranking segments for TMDL's.

The existing regulations governing establishment of water quality standards (40 CFR 130.17(c)) allow consideration of economic factors. The benefits of attaining water quality standards should be considered in the water quality standard setting process itself.

(5) One commenter suggested that factors other than (1) the severity of pollution, and (2) the uses to be made of the waters (§ 303(d)(1)(A)) may not be considered in establishing priority rankings for waters.

Section 303(d)(1)(A) is not exclusive of other factors. While States must consider the severity of pollution and uses to be made of the waters in establishing priority rankings, the statute does not preclude consideration of additional relevant factors such as timing, resource needs and level of technical detail.

(6) One commenter noted that while § 303(d)(1)(C) requires that TMDL's be calculated for waters in which the effluent limitations are not stringent enough to implement the applicable water quality standard, § 303(d)(3) requires TMDL's be estimated "for the specific purpose of developing information" for all other waters.

The proposed identification did fail to make this distinction clear. The proposal primarily deals with the States' obligations under section 303(d)(1)(C). All elements of the proposal, including recommendations for prioritization of TMDL calculations related to the States' obligations under section 303(d)(1)(C). These elements of the proposal would also apply to the States' obligations under § 303(d)(3) although EPA considers this requirement of the Act less significant than the requirement of section 303(d)(1)(C). Section 303(d)(3) deals with waters other than those identified in section 303(d)(1)(A) and (B) and requires TMDL's be estimated for informational purposes. While States should identify all water segments within their boundaries, TMDL's need be calculated only for pollutants for which the segments are water quality limited.

(7) One commenter requested a clarification of EPA's policy towards TMDL's in segments without existing water quality problems.

EPA's notice was intended to indicate that States are not limited to performing TMDL's in water quality limited segments but may also calculate TMDL's in segments which are not water quality limited. The draft has been revised accordingly.

(8) One commenter suggested that municipal dischargers be in compliance with effluent limitations before TMDL's are developed and wasteload allocations are made.

This is not a required prerequisite in the Act for development of TMDL's or wasteload allocations.

(9) One commenter suggested that the required date for pollutant identification should be deferred until after compliance with best available technology economically achievable (BAT)



## STATE SUBMISSIONS

effluent limits under section 301 of the Act.

The identification is required by court order. In fact, the Act required identification within one year of the enactment of the 1972 Amendments. In any case, the stream quality that would be achieved through compliance with BAT effluent limitations can usually be modeled prior to date of actual compliance. This makes it unnecessary to wait until after BAT compliance is achieved to see if the water quality standards will be met.

(10) One commenter requested a clarification of the issue of point and nonpoint source loadings.

We have eliminated the reference to nonpoint source contributions in establishing priorities for TMDL development, since the relative significance of point and nonpoint source contributions will in some cases not be determined until TMDL's are developed.

(11) Some commenters expressed concern that the proposal appeared to downgrade the role that TMDL's play in setting of effluent limits and criticized what they described as the EPA's lack of a sense of urgency in setting TMDL's. In their opinion this could lead to discharge limitations more stringent than necessary to meet water quality standards.

As stated in the proposal, EPA has not considered the development of TMDL's as a high priority since many of the practical results are being achieved through State water quality management processes. EPA does not consider the establishment of TMDL's as essential to setting of water quality based effluent limits. Development of TMDL's pursuant to section 303(d) is not a necessary prerequisite to adoption or enforcement of water quality standards, and therefore, will not determine the validity of existing, revised or new water quality standards. EPA believes that its identification and information provide a phased approach to establishment of TMDL's consistent with the intent of Congress, and also ensure that current State water quality management programs will not be disrupted. EPA's identification also provides needed flexibility in the development of TMDL's.

(12) One commenter suggested that the notice should require calculation of TMDL's for all water quality limited segments by 1983.

While EPA encourages the establishment of TMDL's at the earliest date practicable, calculation of TMDL's will be an evolving and time consuming process which does not lend itself to imposition of a deadline date. This should not be a problem since, as stated in the notice, development of TMDL's is not a necessary prerequisite to adoption or enforcement of water quality standards.

One commenter maintained that it would be difficult for States to submit their first TMDL calculation within six months of EPA's final identification, particularly in light of the fact that prior to performing these calculations, segment identification and priority ranking should also be accomplished.

The identification of one or more segments, and a TMDL for one or more segments, are the only items required within six months. Priority rankings should be submitted as part of the State/EPA agreement. EPA recognizes the problems in developing TMDL's within six months, and therefore reiterates that results of past or ongoing efforts can be submitted.

## OTHER COMMENTS

(1) Several commenters suggested that EPA modify its proposal to encourage public participation, particularly in establishing priorities and calculating TMDL and wasteload allocations.

The proposed water quality management regulations require compliance with the forthcoming public participation regulations. (43 FR 40750, September 12, 1978). The WQM regulations also specifically require the WQM planning agencies to provide the public with an opportunity to review and comment on proposed plans (TMDL's would be a part of these plans). (40 CFR 35.1533-3). These regulations also provide the public with an opportunity to participate in the development of the State/EPA agreements which will determine priorities for completing TMDL's.

(2) One commenter asked whether existing NPDES permits will have to be modified once a TMDL is completed.

NPDES permits are generally issued for a five year period. In most cases, permit conditions based on TMDL's will be incorporated into permits only upon reissuance.

(3) One commenter suggested that there should be a weighing of cost and benefits for determining which dischargers should have their permits based on TMDL's.

This notice is not intended to provide guidance on how States should allocate the total maximum daily load among individual point sources.

## (b) REVISIONS TO THE PROPOSED NOTICE

As a result of public comments and continuing review of the proposed notice by EPA, the following changes have been made in the final notice:

(1) The notice has been revised to reflect the distinction of the States' obligations under sections 303(d)(1)(C) and 303(d)(3) of the Act. As discussed

above, both sections 303(d)(1)(C) and 303(d)(3) require States to perform TMDL's, but EPA considers the requirements of section 303(d)(1)(C) to be of greater importance toward achieving the goals of the Act. The final notice reflects this position.

(2) The reference in the priority section to nonpoint source contributions in establishing priorities for TMDL development has been deleted. The reasoning supporting this revision was that the relative significance of point and nonpoint contributions will in some cases not be determined until TMDL's are developed.

(3) Section 304(a)(2)(D) requires the Administrator to both publish an identification of and information on pollutants suitable for TMDL calculation. The information provided in the proposed notice is not being revised significantly (with the exception of (1) and (2) above), but should be considered supplemented by EPA's response to the comments. Additional information in the responses is consistent with the information in the proposal and merely explains or elaborates on the information in the proposal.

## (c) FINAL NOTICE

This notice is being issued pursuant to an order of the U.S. District Court for the District of Columbia in *Board of County Commissioners of Calvert County, et al. v. Costle, et al.* (No. 78-0572).

Under section 304(a)(2)(D) EPA was required to publish an identification of pollutants suitable for total maximum daily load calculation within one year of the enactment of the 1972 Amendments to the Act. On October 26, 1973, EPA published a notice of availability (38 FR 29646) of a two-volume document containing a draft identification of pollutants potentially suitable for TMDL calculations. The draft identification was never finalized.

EPA did not consider such finalization a matter of high priority because many of the practical results of such an action are being accomplished in any event through the required State water quality management planning process under sections 208 and 303(e) of the Act. In particular, EPA's regulations at 40 CFR § 131.11 (f) and (g) include TMDL calculations and wasteload allocations as part of State water quality management plans.

However, on June 30, 1978, the Court issued an order requiring EPA to publish a final identification under section 304(a)(2)(D). EPA is, accordingly, issuing this final notice of identification today. Final identification under section 304(a)(2)(D) triggers the requirement under section 303(d) that States, or in certain instances EPA, calculate TMDL's for all segments in which water quality standards are not

expected to be met through the implementation of technology-based effluent limitations. EPA has carefully considered these requirements in issuing its identification, and we believe that the identification published today will have the least disruptive effect on ongoing State programs designed to meet water quality objectives.

EPA's identification will make the requirement for establishment of TMDL's part of the States' ongoing section 208 and section 303 planning processes. The identification should therefore not require States which are carrying out their functions under sections 208 and 303 to devote additional resources to wasteload allocations and TMDL development. Priority ranking systems will be established to keep the development of TMDL's within available resources.

This identification shall be effective as of December 28, 1978.

Dated: December 22, 1978.

THOMAS C. JORLING,  
Assistant Administrator for  
Water and Waste Management.

## IDENTIFICATION AND IMPLEMENTATION INFORMATION

## A. IDENTIFICATION

EPA's identification is as follows: All pollutants, under the proper technical conditions, are suitable for the calculation of total maximum daily loads.

The Agency believes that under the proper technical conditions total maximum daily loads (TMDL's) and wasteload allocations can be developed for all pollutants. The requirements to perform TMDL's will be adjusted according to a priority ranking as envisioned by section 303(d) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to avoid over-loading either the States or EPA during the phased development of TMDL's.

## B. INFORMATION—CALCULATION OF TMDL'S

1. *Water Quality Standards.* Section 303(d)(1)(C) of the Clean Water Act provides that TMDL's will be calculated in order to establish an upper limit on pollution loading which will still allow meeting applicable water quality standards for the particular body of water. The water quality standard for each body of water consists of the designated use (classification) of the body of water, the associated numerical and non-numerical water quality criteria necessary to protect the designated use, and anti-degradation requirements. See 43 FR 29588-92 (July 10, 1978) for a recent detailed statement on water quality standards.

TMDL's can only be calculated for water bodies and pollutants with a specified numerical limit based upon approved or promulgated ambient

water quality standards. Such numerical limits may be specified in the water quality standards or may be based upon the level of control necessary to prevent the violation of a quantitative or nonquantitative water quality criterion. For example, a TMDL could be calculated for a certain concentration limit for a toxic substance, when this particular pollutant is not specifically addressed in the numerical criteria, if the concentration limit used is necessary to prevent the violation of a general prohibition against the discharge of toxic substances in toxic amounts.

Since TMDL's must be established at levels necessary to implement the applicable water quality standards, any change in numerical criteria for pollutants contained in water quality standards will impact the TMDL's calculated for such a pollutant. Therefore, TMDL's should be reviewed each time the corresponding water quality standards are revised.

Finally, EPA recognizes that State development of TMDL's and wasteload allocations for all water quality limited segments will be a lengthy process. Water quality standards will continue to be enforced during this process. Development of TMDL's pursuant to section 303(d) is not a necessary prerequisite to adoption or enforcement of water quality standards, and, therefore, will not determine the validity of existing, revised or new water quality standards.

2. *Methods for TMDL Calculation.* Water pollutants can generally be classified as either conservative or nonconservative. Technical conditions for calculation of TMDL's and wasteload allocations vary with the type of pollutant, with one method of calculation for pollutants which are generally classified as conservative and another method for pollutants generally classified as nonconservative. Conservative pollutants (such as certain dissolved solids) are those pollutants which persist in the water column of the aquatic environment. The amount of a conservative pollutant in a given segment will remain essentially constant over time. Nonconservative pollutants (such as many organic compounds) decay or are otherwise removed over time. This decrease in concentration may be due to a number of factors including chemical breakdown and biodegradation.

EPA recognizes that the dividing line between conservative and nonconservative pollutants is not sharp and the classification of a given pollutant may vary depending upon the level of sophistication required in a particular analytical situation. The classification is helpful, however, in determining which method of calculation should be used. See *Simplified Mathematical*

*Modeling of Water Quality*, EPA, March 1971, and *Addendum to Simplified Mathematical Modeling of Water Quality*, EPA, May 1972.

a. *Conservative Pollutant TMDL (C-TMDL).* The C-TMDL of a body of water is that pollutant loading which, by simple dilution with the receiving body of water, results in an ambient concentration equal to the specified numerical concentration limit for that pollutant, i.e., the concentration limit based upon the applicable water quality standards. Since the C-TMDL depends upon simple dilution, the C-TMDL varies directly with the volumes or flows of dischargers and the receiving body of water, with a larger flow providing a larger C-TMDL.

b. *Nonconservative Pollutant TMDL (N-TMDL).* The N-TMDL is not an intrinsic property of a body of water, since the N-TMDL varies with a number of factors, e.g., flow or volume of the receiving body of water, flow from dischargers, and the configuration of discharge locations on the body of water. Therefore, the N-TMDL can only be calculated with fairly sophisticated techniques such as mathematical modeling, which takes these factors into account. As with the C-TMDL, the N-TMDL results in an ambient concentration of the pollutant equal to the specified numerical concentration limit for that pollutant, i.e., the concentration limit based upon the applicable water quality standards.

## C. INFORMATION—PRIORITY RANKING

EPA's proposed identification of pollutants is not designed to require States to devote additional resources to wasteload allocations and TMDL development. As stated previously, it is envisioned that establishment of TMDL's would be part of States' ongoing sections 208 and 303(e) planning processes funded under sections 106 and 208 of the Act. To keep the requirements of developing TMDL's within available resources and to meet statutory schedules for preparing TMDL's, States must establish priority rankings.

1. *Statutory Requirements.* Section 303(d)(1)(A) requires States to identify waters where water quality standards will not be met by application of effluent limitations required under sections 301(b)(1) (A) and (B) of the Act. These waters are designated as water quality limited segments. The process of stream segment classification has been largely completed as part of basin planning under section 303(e) of the Act. Section 303(d)(2) requires States to submit their first segment identifications and TMDL calculations within 180 days of the Administrator's final identification pursuant to section 304(a)(2)(D). After the States' first submission, subsequent segment iden-



tifications and TMDL calculations must be submitted from "time to time." Section 303(d)(2). Priority rankings of waters will ensure compliance under a reasonable schedule with the Act's "time to time" requirement. In addition to State's obligations under section 303(d)(1)(C) to calculate TMDL's, section 303(d)(3) requires States to estimate TMDL's for informational purposes for all waters not identified in sections 303(d)(1)(A) and (B). This latter requirement may be assigned lower priority by the States in their TMDL programs.

Section 303(d)(1)(A) required the States to establish a priority ranking for those waters which States identify as water quality limited. In establishing the priority ranking, § 303(d)(1)(A) requires the States to take into account (1) the severity of pollution and (2) the uses to be made of the waters identified. In assessing severity of pollution, States should consider the type of pollutants involved as well as the violations of water quality standards. In addition, States are not limited to addressing only segments with existing problems but may also take into account the need to protect existing high quality waters.

2. **Priority Ranking Agreements.** Since calculation of TMDL's will be part of State water quality management planning, priorities for TMDL's will be negotiated as part of the State/EPA agreement under the water quality management regulations. 40 CFR 130.11; see proposed 40 CFR 35.1507, 43 FR 40742 (September 12, 1978). EPA's recently proposed regulations would require States to establish priority ranking as part of the State strategy. The priority ranking, timing, resource needs, level of technical detail and other specifics of TMDL development will be negotiated by the States and EPA, and then set forth in the work program.

3. **Content of Priority Ranking.** In developing the priority ranking in the work programs for water quality segments on which TMDL's will be calculated during each following year, the States should consider at least the following factors.

First, section 303(d)(1)(A) requires States to take into account (1) the severity of pollution and (2) the uses to be made of the waters identified. (See discussion, part II.C.1).

Second, States should also consider other factors in establishing priority ranking of segments or priorities for calculation of TMDL's among the high ranking segments. Some of the factors for consideration in ranking may include the following:

(1) Calculation of TMDL's should be given higher priority when they are expected to result in effluent limitations in NPDES permits. If NPDES

permits are not scheduled for reissuance in the near future, the calculation of TMDL's for that segment may receive a low priority. Similarly, if implementation of national effluent limitation guidelines would eliminate water quality standards violations for certain stream segments, calculation of TMDL's may receive low priority. These considerations will avoid use of limited resources where implementation of the TMDL's would not be likely in the near future.

(2) Resources may be concentrated on segments and pollutants where acceptable models and adequate data are available at reasonable cost.

(3) Since the Act requires TMDL's to be established at levels necessary to implement water quality standards, TMDL's should be designed to result in the attainment of standards.

(4) States should also consider coordinating the development of TMDL's with other water quality analyses. These analyses include intensive surveys and fixed station analyses under the Basic Water Monitoring Program, water quality standard revisions, preparation of the section 305(b) report and advanced waste treatment reviews conducted under section 208.

(5) States should also consider any national priorities developed by EPA.

States may consider the above factors as well as additional factors they deem important to the priority ranking process for development of TMDL's. States will be required to set forth justification for the priority ranking of each stream segment but will not be required to develop a system which sets forth each factor considered and the weight given to each factor. States will be required to rank every water quality segment in the State. However, States need not reclassify segments already classified.

#### D. STATE SUBMISSIONS AND EPA APPROVAL

To comply with the requirements of the Act, States must submit the following information within 180 days of EPA's final identification of pollutants suitable for TMDL calculation.

(1) An identification of waters for which effluent limitations required by sections 301(b)(1)(A) and (B) are not stringent enough to implement applicable water quality standards. This requirement can be satisfied by referencing documents already submitted to EPA, e.g., section 305(b) reports.

(2) The TMDL established under section 303(d)(1)(A) for one or more of the above waters. This requirement can be satisfied by referencing documents already submitted to EPA or by submitting TMDL's based on information available in other water quality studies. States should indicate whether those loads previously submitted to EPA are still regarded as adequate.

Priority rankings are not required within 180 days. They will be submitted pursuant to schedules established in the State/EPA agreements. Subsequent submission of TMDL's shall also be submitted pursuant to State/EPA agreements.

Under section 303(d)(2), EPA must approve or disapprove State submissions. In reviewing State submissions, EPA may conditionally approve the submissions with the understanding that States will provide supplementary information within a reasonable time and according to a schedule established by the State/EPA agreement. After EPA approval, section 303(e) requires States to incorporate the TMDL's into their water quality management plans pursuant to section 303(e)(3)(C).

[FR Doc. 78-36206 Filed 12-27-78; 8:45 am]

#### [6560-01-M]

[FRL 1029-6; OPP-50397]

#### ISSUANCE OF AN EXPERIMENTAL USE PERMIT

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such a permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 11273-EUP-13. Sandoz, Incorporated, San Diego, California 92108. This experimental use permit allows the use of the remaining supply of approximately 240 pounds of the herbicide norflurazon in or on apples, pears, grapes, citrus crops, almonds and almond hulls to evaluate control of certain grassy and broadleaf weeds. A total of 74 acres is involved; the program is authorized only in the States of Arizona, California, Oregon, and Washington. The experimental use permit is effective from November 30, 1978 to November 30, 1979. Temporary tolerances for residues of the active ingredient in or on apples, pears, grapes, citrus crops, almonds and almond hulls have been established. (PM 23, Room: E-351, Telephone: 202-755-1397).

Interested parties wishing to review the experimental use permit are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W. Washington, D.C. 20460. The descriptive paragraph for the permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made

conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: December 18, 1978.

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

[FR Doc. 78-36031 Filed 12-27-78; 8:45 am]

#### [6560-01-M]

[FRL 1029-7; PP 7G1933/T180]

#### NORFLURAZON

#### Renewal of Temporary Tolerances

On April 13, 1978 the Environmental Protection Agency (EPA) gave notice (43 FR 15487) that in response to a pesticide petition (PP 7G1934) submitted to the Agency by Sandoz, Inc., PO Box 1489, Homestead, FL 33030, temporary tolerances were established for residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-( $\alpha,\alpha,\alpha$ -trifluoro-m-tolyl)-3(2H)-pyridazinone) in or on the raw agricultural commodities almonds, almond hulls, apples, citrus crops, grapes, and pears at 0.1 part per million (ppm). These temporary tolerances expired November 10, 1978.

Sandoz, Inc., requested a one-year renewal of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of an experimental use permit (11273-EUP-13) that has been renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated and it was determined that a renewal of the temporary tolerances would protect the public health. Therefore, the temporary tolerances have been renewed on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Sandoz, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer of employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire November 30, 1979. Residues not in excess of 0.1 ppm remaining in or on almonds, almond hulls, apples, citrus crops, grapes, and pears after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Ms. Willa Garner, Product Manager, 23, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW., Washington DC 20460 (202/775-7012).

Dated: December 19, 1978.

(Section 408(j) of the Food, Drug, and Cosmetic Act [21 U.S.C. 346(j)]).

DOUGLAS D. CAMPT,  
Acting Director,  
Registration Division.

[FR Doc. 78-36030 Filed 12-27-78; 8:45 am]

#### [6730-01-M]

#### FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1008]

#### FOX FORWARDING CO., MARIE G. FOX D.B.A.

#### Order of Revocation

On November 30, 1978, Fox Forwarding Company, Marie G. Fox d/b/a 1617 Wrenford Road, Cleveland, Ohio 44121, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1008.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977:

It is ordered, that Independent Ocean Freight Forwarder License No. 1008 issued to Fox Forwarding Company, Marie G. Fox d/b/a, be and is hereby revoked effective November 30, 1978 without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1008, issued to Fox Forwarding Company, Marie G. Fox d/b/a be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the FEDERAL REGISTER and served upon Fox For-

warding Company, Marie G. Fox, d/b/a.

ROBERT G. DREW,  
Director, Bureau of  
Certification and Licensing.

[FR Doc. 78-36128 Filed 12-27-78; 8:45 am]

#### [4110-89-M]

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### Office of Education

#### HIGHER EDUCATION ACT (HEA) OF 1965; REAUTHORIZATION ISSUES

#### Public Hearings

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of Public Hearing.

SUMMARY: This document establishes the times and dates for public hearings on the reauthorization of HEA of 1965. One public hearing will be held in each of the ten regions.

The purpose of the hearings is to assist the administration in developing its HEA proposals by providing public discussion of issues and proposals related to specific Federal programs being considered in the reauthorization of the HEA of 1965.

#### REGION I

DATE: February 1, 1979

LOCATION: Boston University, George Sherman Union, Conference Auditorium  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. Thomas Burns, Regional Commissioner, (617) 223-7205

#### REGION II

DATE: February 1, 1979

LOCATION: New York University, Schimmel Auditorium, Upper Concourse-Tisch Hall, 40 W. 4th Street, New York, N.Y.  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. William Green, Regional Commissioner, (212) 264-4370

#### REGION III

DATE: January 24, 1979

LOCATION: Drexel University, Mandell Theater, 33rd & Chestnut Streets, Philadelphia, Pa. 19104  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. Albert C. Crambert, Regional Commissioner, (215) 596-1001

#### REGION IV

DATE: January 22, 1979

LOCATION: Georgia State University, Urban Life Auditorium, University Plaza, Atlanta, Ga. 30303  
TIME: 1:00-5:00 p.m.; 6:00-10:00 p.m.  
CONTACT: Dr. William Lewis, Regional Commissioner, (404) 221-2063

#### REGION V

DATE: February 1, 1979

LOCATION: University of Illinois, Chicago Circle Center, Conference Room 605, 750 South Halstead Street  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.



CONTACT: Ms. Juliette Noone Lester, Regional Commissioner, (312) 353-5215

#### REGION VI

DATE: January 29, 1979  
LOCATION: El Centro College, Performance Hall, Main & Lamar Streets, Dallas, Tex. 75202  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Mr. Edward J. Baca, Regional Commissioner, (214) 767-3626

#### REGION VII

DATE: January 24, 1979  
LOCATION: Penn Valley Jr. College, 3201 Southwest Trafficway, Room 503—Hearing Room, Kansas City, Mo. 64111  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. Harold Blackburn, Regional Commissioner, (816) 374-2276

#### REGION VIII

DATE: January 24, 1979  
LOCATION: Colorado Women's College, Houston Fine Arts Center, Landler Lounge, Denver, Colo. 80220  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. John Runkel, Regional Commissioner, (303) 837-3544

#### REGION IX

DATE: January 22, 1979  
LOCATION: San Francisco State University, 1600 Holloway Avenue, San Francisco, Calif.  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Dr. Caroline Gillen, Regional Commissioner, (415) 556-4920

#### REGION X

DATE: January 26, 1979  
LOCATION: Seattle University, Library Auditorium, 12th & Columbia Streets, Seattle, Wash. 98122  
TIME: 1:00-5:00 p.m.; 7:00-10:00 p.m.  
CONTACT: Mr. Allen Apodaca, Regional Commissioner, (206) 442-0460

#### Supplementary Information

This public hearing will be sponsored by the Assistant Secretary for Education and the U.S. Commissioner of Education. Its purpose is to provide an opportunity to the public to share their concerns and proposals regarding each of the programs to be reauthorized in HEA.

Each hearing will be co-chaired by a Regional Education Commissioner and a Washington based education official from the Department of Health, Education, and Welfare. Among the officials from Washington who will attend a number of the meetings are Dr. Mary F. Berry, Assistant Secretary for Education; Dr. Ernest L. Boyer, Commissioner of Education; and Dr. Michael O'Keefe, Deputy Assistant Secretary for Planning and Evaluation.

Requests to testify will be accepted from students, parents, faculty, administrators, public officials and educational organizations. Those interested, should directly contact the Regional Education Commissioner in the Region they wish to testify. Notice of participation should be made no later

than five working days prior to the scheduled date of the hearing. The following information should be provided when contacting the Regional Commissioner: Name; address (business, if appropriate); telephone number during normal working hours; capacity in which the presentation will be made (i.e., parent, faculty, student, etc.); principal issues to be addressed; minimum time necessary for presentation; and text of presentation, if available.

In order to insure that the given testimony is effectively integrated into the Departmental deliberations on the reauthorization of HEA, we request that presentors clearly identify the programs they are discussing. Included below is a list of each of the programs up for reauthorization as well as a brief description.

The transcription and all written proceedings will become a part of the record in the proceedings.

Dated: December 21, 1978.

MARY BERRY,  
Assistant Secretary  
for Education.

Dated: December 21, 1978.

ERNEST L. BOYER,  
Commissioner of Education.

POSTSECONDARY EDUCATION PROGRAMS AUTHORIZED THAT EXPIRE AT THE END OF FY 1979

#### NATIONAL DEFENSE EDUCATION ACT

##### Title VI—Foreign Studies and Language Development

Title VI of the National Defense and Education Act authorizes the award of grants and contracts to U.S. educational institutions, organizations and individuals. These are awarded for institutional development, fellowships, and research in foreign languages, area studies, world affairs and intercultural understanding. For fiscal year 1979, \$20 million has been appropriated for this program.

#### GENERAL EDUCATION PROVISIONS ACT

##### Fund for the Improvement of Postsecondary Education

The Fund provides project grants for activities sponsored by institutions and agencies which develop and demonstrate more effective approaches to postsecondary education. Its funding in the past has focused on:

- equal educational opportunity
- basic skills research
- curricular research
- credentialling service
- finance
- student decision making

For fiscal year 1979, \$13 million has been appropriated for this program.

#### HIGHER EDUCATION ACT OF 1965

##### Title I—Community Service and Continuing Education Programs

A. Community Service and Continuing Education Programs.—This program pro-

vides grants to States and to institutions to strengthen community service programs of colleges and universities for the purpose of assisting them in the solution of community problems. For fiscal year 1979, \$16 million has been appropriated for this program.

B. Lifelong Learning.—Under this program the Assistant Secretary for Education is authorized to carry out a program of planning, assessing and coordinating projects related to Lifelong Learning. The Assistant Secretary is authorized further to make grants to State agencies, institutions of higher education and public and non-private agencies in order to carry out the purpose of the statute. The program is presently unfunded.

##### Title II—College Library Assistance and Library Training and Research

A. College Library Resources.—This program provides grants to eligible institutions to assist and encourage them in the acquisition of library resources including law library resources, such as books, periodicals, documents, magnetic tapes, phonograph records, audiovisual materials and other related materials. For fiscal year 1979, \$9.975 million has been appropriated for this program.

##### B. Library Training and Research:

Library Career Training.—This program provides grants to eligible institutions and agencies to support training and retraining of librarians and information scientists including paraprofessionals, for service in all types of libraries and information centers. Training is accomplished through short and long-term institutes, traineeships, and pre and postbaccalaureate fellowships. For fiscal year 1979, \$2 million has been appropriated for this program.

Library Research and Training.—The purpose of the program is to provide support for research and demonstration projects for the improvement of libraries and training in librarianship. Projects are funded which will design quality educational opportunities for the educationally disadvantaged; provide improved information services to special target groups; improve administration of all types of libraries on a national basis; and improve information access. For fiscal year 1979, \$1 million has been appropriated for this program.

C. Strengthening Research Library Resources.—This program provides grants to major research libraries for the purpose of maintaining and strengthening their collections and making their holdings available to individual researchers and scholars outside their primary clientele and to other libraries whose users have need for research materials. This program support is intended to improve the quality of education, especially at the undergraduate level and to generally improve the scientific, economic and cultural development of the nation. For fiscal year 1979, \$6 million has been appropriated for this program.

##### Title III—Strengthening Developing Institutions

This program seeks to assist developing colleges under the definition of the act in improving their academic, administrative and student service programs. Through this program schools are to be brought closer to the "academic mainstream." About 330 schools are currently funded at a cost of \$120 million. For fiscal year 1979, \$120 million has been appropriated for this program.

#### Title IV—Student Assistance

##### A. Grants to Students in Attendance at Institutions of Higher Education:

1. Basic Education Opportunity Grants.—The BEOG is an entitlement program administered by the Office of Education which provides grants directly to students based on need. The amount of the award is based on family size, income, assets and limited to one-half the costs of attendance at a given school. In fiscal year 1979, \$2.6 billion was appropriated and grants which range from \$200 to \$1,800 will be available to students with family incomes up to \$25,000.

2. Supplemental Educational Opportunity Grants.—This program provides grants to students of exceptional financial need to assist them in pursuing higher education. Funds are allotted among states by a legislative formula and within states according to regulations. Actual grants to students are determined by financial aid officers. In fiscal year 1979, \$340 million was appropriated.

3. State Student Incentive Grant Program.—This program provides matching grants to States to develop and expand need-based student grant and scholarship programs at institutions of postsecondary education. About \$77 million in Federal funds and over \$800 million in State funds will combine in 1978-79 to make awards to about 300,000 students.

4. Special Programs for Students from Disadvantaged Backgrounds.—This program provides funds to institutions of higher education to establish projects to provide tutoring, special classes and counseling for students with academic potential but who by reason of deprived educational, cultural, economic backgrounds or physical handicap or limited English speaking ability are in need of such services to successfully complete postsecondary education. For fiscal year 1979, \$55.3 million has been appropriated for this program.

Upward Bound.—This program is designed to serve youths from low-income families who have academic potential but who may lack adequate secondary school preparation for postsecondary education. Projects under this program are intended to generate the skills and necessary motivation for success in postsecondary education. For fiscal year 1979, \$60.9 million has been appropriated for this program.

Talent Search.—Services under this program are designed to assist youths from low-income families who have academic potential but who may lack adequate secondary school preparation to complete secondary school and to enter education. Projects include the following activities: identifying such youths; publishing information on existing forms of student financial aid and encouraging secondary school or college dropouts to re-enter education programs. For fiscal year 1979, \$15.3 million has been appropriated for this program.

Service Learning Centers.—This program is authorized to provide remedial and other special services for disadvantaged postsecondary students through institutions of higher education. These centers are to coordinate and supplement the ability of that institution to furnish such services to such students. No funds have been appropriated for this program.

5. Educational Opportunity Centers.—This program covers up to 75% of the cost of establishing and operating centers in areas with major concentrations of low-income

persons. Centers serve as clearinghouses of information on financial and academic support, assist students in making application and provide counseling, tutoring and other necessary services. For fiscal year 1979, \$6.5 million has been appropriated for this program.

6. Educational Information Centers.—States receive funds for centers which provide information and talent search services to persons who could benefit from postsecondary education were it not for cultural or financial barriers, physical handicaps or information needs about available programs. In addition the centers will include such services as assistance in gaining admission to postsecondary education and remedial and tutorial services. For fiscal year 1979, \$3 million has been appropriated for this program.

7. Assistance to Institutions of Higher Education.—This program is authorized to provide institutions of higher education with direct general assistance based on an allocation formula which takes into account such factors as size of institution by enrollment and number of enrolled Basic Grant recipients. This program has never been funded.

8. Veterans' Cost-of-Instruction Payments to Institutions of Higher Education.—The VCIP is intended to provide improved and expanded services to veterans attending institutions of higher education. Services include recruitment, counseling, special instructional programs and outreach activities. Funds are distributed on the basis of enrolled veterans. For fiscal year 1979, \$19 million has been appropriated for this program.

B. Direct Loans to Students in Institutions of Higher Education (NDSL Program) (Formerly Title II of NDEA).—This program allocates capital to institutions of higher education for the purpose of making long term, low interest education loans to students with financial need. Such loans are designed to provide lower income students with an additional source of funds and to ensure access to postsecondary education. State allocations are made by statutory formula; institutional allocations are made by regulations. Students may borrow up to \$5,000 as undergraduates; \$10,000 as graduate students. Fiscal year 1979 appropriations totaled \$329 million providing over 800,000 loans.

##### Title V—Teacher Corps and Teacher Training Programs

A. Teacher Corps Programs.—The purpose of the Teacher Corps program is to strengthen the educational opportunities available to children in areas having concentrations of low-income families; to encourage colleges and universities to broaden their programs of teacher preparation; and to encourage institutions of higher education and local educational agencies to improve programs of training and retraining for teachers, teacher aides and other educational personnel. The program currently emphasizes the achievement of school reforms identified by the grantor. For fiscal year 1979, \$37.5 million have been appropriated for this program.

B. Teacher Training Programs.—This program is generally authorized to make grants to institutions of higher education to assist in training individuals preparing to serve as teachers, guidance counselors or administra-

tive personnel. This program is not currently funded.

C. Teacher Centers.—This program funds centers established by local educational agencies which aid teachers in developing and producing curricula designed to meet the educational needs of persons in the funded community. In addition, the centers may provide training to teachers to better meet special education needs and information on developments in curriculum development and educational research. For fiscal year 1979, \$12.6 million has been appropriated for this program.

##### Title VI—Financial Assistance for the Improvement of Undergraduate Instruction

The legislative objective of this program is to improve undergraduate classroom instruction by providing matching funds for the acquisition of instructional equipment and materials to institutions of higher education with the exception of schools or departments of divinity. This program is currently unfunded.

##### Title VII—Construction, Reconstruction and Renovation of Academic Facilities

A. Grants for Construction, Reconstruction and Renovation of Undergraduate Academic Facilities.—The objective of this program is to provide grants to institutions of higher education to finance the construction, rehabilitation or improvement of undergraduate academic facilities. This program is currently unfunded.

B. Grants for Construction, Reconstruction and Renovation of Graduate Academic Facilities.—The purpose of this program is to make grants to institutions of higher education to assist them in improving existing graduate schools and cooperative graduate centers and in establishing graduate schools and cooperative graduate centers of excellence in order to increase the supply of high quality personnel needed by communities, industry and government for teaching and research. This program has not been funded since fiscal year 1969.

##### C. Loans for Construction, Reconstruction and Renovation of Academic Facilities:

Loans for Construction of Higher Education Facilities.—The objective of this program is to reduce the financial burden on institutions of higher education through loans with a low rate of interest. This program has been inactive since fiscal year 1975.

Annual Interest Grants.—The purpose of this program is to encourage the use of private capital for construction of academic facilities as well as to reduce the interest burden on borrowers to a level commensurate with direct loans for academic facilities. For fiscal year 1979, \$29 million has been appropriated.

D. Assistance in Major Disaster Areas.—This program is designed to provide financial assistance to institutions of higher education whose facilities have been damaged or destroyed by a disaster. The funds are to be used to enable the institution to carry out the construction necessary to restore or replace the damaged facilities. This program has no specific appropriation.

##### Title IX—Graduate Programs

A. Grants to Institutions of Higher Education

B. Fellowships to Graduate and Professional Study.—This program supports activities which help increase access into gradu-



ate and professional education for members of groups, particularly minorities and women, that have traditionally been under-represented among the recipients of graduate and professional degrees in this country. The program provides fellowships (under Part B), and institutional grants (under Part A), which strengthen such programs at institutions of higher education. Fiscal year 1979 appropriations total \$8 million for this program.

**C. Public Service Fellowships**—This program was created to address the critical shortage of able administrative, professional, and technical manpower in State and local government. Part A authorizes the Secretary to make grants or contracts with institutions of higher education to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of graduate or professional students to enter the public service. Research into the development or demonstration of improved methods for public service education is also authorized. Part B authorizes the award of fellowships for graduate or professional study for persons who plan to pursue a career in public services. Funding in fiscal year 1979 for this program is \$4 million.

**D. Fellowships for Other Purposes:**  
**Advanced Study in Mining, Etc.**—This program provides fellowships to assist graduate students of exceptional ability who demonstrate a financial need for advanced study in domestic mining and mineral fuel conservation including oil, gas, coal, oil shale, and uranium. Fellowships, awarded by the institution, may not exceed \$500 per year for graduate and professional study leading to an advanced degree or research related to a doctoral dissertation. For fiscal year 1979, \$4.5 million has been appropriated for this program.

**Assistance for Training in the Legal Profession**—This program is authorized to fund public and private agencies and organizations other than institutions of higher education. It selects students from disadvantaged backgrounds and facilitates their entry into institutions of higher education for training in the legal profession. It funds counseling and other services and up to three months of preliminary training. For fiscal year 1979, \$1 million has been appropriated for this program.

#### Title X—Establishment and Expansion of Community Colleges

Under this program funds would be provided to help States develop a statewide plan for the establishment, expansion or improvement of community colleges. Grants would also be provided through a State formula for the purpose of improving educational opportunity in State community colleges. This program has never been funded.

#### Title XI—Law School Clinical Experience Program

This program awards grants to accredited law schools for establishing or expanding demonstration projects to provide clinical experience to law students in the practice of law. Preference is given to projects providing experience in the preparation and trial of cases. Federal funds are limited to 90% of total costs and may be used for planning, preparation of teaching materials, administration and the training of faculty members. For fiscal year 1979, \$2 million has been appropriated for this program.

#### Title XII—General Provisions

**Comprehensive statewide Planning (Section 1203)**—Title XII established 1202 Commissions in each State to undertake comprehensive statewide planning in postsecondary education. The 1202 Commission must represent the general public, public, private (non-profit) and proprietary institutions within the State. Fifty-two such commissions were funded in fiscal year 1978. The fiscal year 1979 appropriation for this program is \$3.5 million.

AUTHORITY EXPIRES AT THE END OF FY 1980  
None.

AUTHORITY EXPIRES AT THE END OF FY 1981

#### Higher Education Act of 1965

#### Title IV—Student Assistance

**B. Federal, State, and Private Programs of Low-Interest Loans to Students in Institutions of Higher Education (Guaranteed Student Loan Program)**—The objective of this program is to provide loans to students attending eligible institutions of higher education, vocational, technical business and trade schools and eligible foreign institutions. The program is designed to utilize non-federal loan capital supplied primarily by commercial lenders. Loans are guaranteed either by State or private non-profit agencies or directly by the Office of Education. Students can borrow up to \$7,500 as undergraduates and \$15,000 as graduate students. In FY 1979 about 1.2 million new loans will be disbursed, each averaging about \$1800. For fiscal year 1979, \$739 million has been appropriated for this program.

AUTHORITY EXPIRES AT THE END OF FY 1982

#### Higher Education Act of 1965

#### Title IV—Student Assistance

**C. Work-Study Program**—This program seeks to promote part-time employment of students in eligible institutions who need earnings from employment to finance their course of study. The federal government pays 80 cents of every dollar in wages and the institution pays the remainder. Fiscal year 1979 appropriations are \$550 million.

#### Title VIII—Cooperative Education Program

This program is designed to assist institutions of higher education to establish, strengthen or expand cooperative education programs on their campuses. Such programs are intended to provide alternating periods of academic study and public or private employment. This employment aids students in earning funds to complete their educational program as well as providing work experience toward academic or career objectives. The program can also provide funds for training cooperative education administrators and for seeking methods for improving cooperative education programs. For fiscal year 1979, \$15 million has been appropriated for this program.

#### PERMANENT AUTHORITY

#### Morrill-Nelson Act (Land-Grant Colleges and Universities)

The purpose of this act is to provide grants to support instruction in agriculture, mechanical arts, English, mathematics, science, economics, and special teacher training in the areas of agriculture, mechanical

arts and home economics. For fiscal year 1979, \$2.7 million has been appropriated for this program.

[FR Doc. 78-36055 Filed 12-27-78; 8:45 am]

[4310-02-M]

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Indian Affairs

##### YUOK VOTING LIST

##### Proposed Qualifications for Voting

DECEMBER 18, 1978.

On November 20, 1978, the Office of the Assistant Secretary—Indian Affairs announced a course of action which is intended to resolve the dispute over the use of and benefits from the Hoopa Valley Indian Reservation and its resources. In the November 20 message announcing the plan, the Hoopa Valley Tribe and the Yurok Tribe were named as Indians entitled to use and benefit from the Reservation and its resources. This notice proposes qualifications to be applied in preparing a list of voters who will nominate and select an interim Yurok Tribal governing committee.

Interested persons are invited to submit written comments, suggestions or recommendations about the proposed voting standards. Written comments should be addressed to: Director, Office of Indian Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, and must be received by (30 days from date of publication of notice). Further information may be obtained by contacting the Director, Office of Indian Services, at the above address, or by telephoning him at 202-343-2111.

##### PROPOSED QUALIFICATIONS FOR YUOK VOTING LIST

In preparation for an election to be called by the Secretary of the Interior for nominating and selecting an interim Yurok Tribal governing committee, the Secretary shall prepare a list of Yurok voters, which shall include Yurok Indians who are 18 years of age or older on the date of the election and are:

A. Persons of Indian blood, living on October 1, 1949, who:

- (1) were allotted on the Hoopa Valley Indian Reservation, as extended; or,
- (2) resided on the Hoopa Valley Indian Reservation, as extended, and were eligible to receive allotments but were not allotted; or,
- (3) possess at least ¼ degree Indian blood, resided on the Hoopa Valley Indian reservation, as extended, for 15 years before October 1, 1949, and one of whose ancestors was born on the Hoopa Valley Indian Reservation, as extended; or,

(4) are descendants of allottees and Reservation residents who qualify or, if deceased on October 1, 1949, would have qualified under paragraph (1), (2), and (3) above; or,

(5) persons of at least ¼ degree Indian blood born between October 2, 1949, and a date 18 years before the date of the election to individuals who qualify under paragraphs (1), (2), (3) and (4) above.

B. Persons who are enrolled as members of the Hoopa Valley Tribe shall not be entitled to be included on the Yurok voting list, regardless of whether they are otherwise qualified.

C. The Secretary shall use as resource documents for determining eligibility all available records concerning the Yurok Indians, including the rolls of Indians of California prepared for the distribution of judgment funds, the listing of claimants in *Jessie Short, et al., v. United States*, and the membership roll of the Hoopa Valley Tribe.

D. Being included on the voting list will not necessarily qualify any individual for future membership or for sharing in distributions of tribal assets.

FORREST J. GERARD,  
Assistant Secretary,  
Indian Affairs.

[FR Doc. 78-36074 Filed 12-27-78; 8:45 am]

[4310-84-M]

##### Bureau of Land Management

##### COOK INLET/SHELIKOF STRAIT, ALASKA OUTER CONTINENTAL SHELF (TENTATIVE SALE NO. 60)

##### Call for Nominations of and Comments on Areas for Oil and Gas Leasing

**Purpose of Call:** Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resource development with the protection of the human, marine and coastal environments, as well as assuring States and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3301.3, nominations are hereby requested for areas on the Cook Inlet/Shelikof Strait, Alaska

Outer Continental Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343 as amended). Pursuant to 43 CFR 3301.4, the Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas.

**Description of Areas:** Nominations will be considered for any or all of the blocks seaward of the three mile line, which are to be found on the Protraction Diagrams listed below and which are generally bounded by Kalgin Island on the north, by the Barren Islands at the Kennedy and Stevenson Entrances to Cook Inlet on the east, and as far south in the Shelikof Strait as 57°15' North Latitude.

These blocks may be found on the following Outer Continental Shelf Official Protraction Diagrams, which may be purchased for \$2.00 each from the Manager, Alaska OCS Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510. The street address is 800 A Street, Anchorage, Alaska.

##### OCS Official Protraction Diagrams

1. NO 4-6 Ugashik
2. NO 5-1 Iliamna
3. NO 5-2 Seldovia
4. NO 5-3 Mount Katmai
5. NO 5-4 Afognak
6. NO 5-5 Karluk
7. NP 5-8 Kenai

1. NO 4-6: Blocks 609, 610, 652-654, 695-698, 739-742, inclusive.

2. NO 5-1: Blocks 396, 438-440, 479-484, 522-527, 566-570, 610, 611, 613-615, 657-659, 701-703, 741, 742, 744-748, 785-792, 829-836, 873-880, 918-924, 962-968, 1006-1012, 1053-1056, inclusive.

3. NO 5-2: Blocks 6-14, 49-58, 93-102, 136-145, 178-189, 222-230, 232, 233, 265-273, 276, 277, 309-317, 320, 321, 353, 359-361, 363-365, 399, 403-409, 444, 446-453, 487-489, 491-496, 533-540, 578, 580-584, 621, 625-628, 661-666, 669-672, 705-708, 713-715, 751, 749, 756-760, 793-795, 800-805, 837-839, 843-849, 881, 882, 887-893, 925, 930-938, 973-982, 1017-1022, 1024-1026, inclusive.

4. NO 5-3: All blocks.

5. NO 5-4: Blocks 5-7, 47-51, 90-96, 99, 133-143, 177-186, 221-229, 265-270, 272, 309-313, 353-356, 397-399, 441-443, 485, 486, 529, 473, inclusive.

6. NO 5-5: Blocks 20-37, 64-79, 108-121, 151-164, 194-207, 237-250, 280-293, 321-335, 364-378, 408-420, 449-463, 492-507, 535-550, 579-594, 623-636, 637, 667-680, 711-725, inclusive.

7. NP 5-8: All blocks.

**Instructions on Call:** Nominations must be described in accordance with the Outer Continental Shelf Official Protraction Diagrams prepared by the Bureau of Land Management, Department of the Interior and referred to above. Only whole blocks or properly described subdivisions thereof, not less than one quarter of a block, may be nominated.

Those nominating twelve blocks or more are requested to arrange their

nominations into three groups according to the priority of their interest.

Comments should be as specific as possible in identifying individual blocks or areas which should receive special concern and analysis. In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks where available.

Nominations and/or comments must be submitted not later than February 28, 1979 in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf-Cook Inlet/Shelikof Strait, Alaska," or "Comments on Leasing in the Outer Continental Shelf-Cook Inlet/Shelikof Strait, Alaska," as appropriate. They must be submitted to the Director, Attention 720, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240. Copies should be sent to the Assistant Conservation Manager, U.S. Geological Survey, P.O. Box 259, Anchorage, Alaska 99510, and the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, 800 A Street, P.O. Box 1159, Anchorage, Alaska 99510.

**Use of Information From Call:** Nominations will be evaluated and used along with other geologic and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographic scope of areas which can be successfully planned for a single sale, only a portion of the tracts nominated are selected for further environmental analysis and possible leasing.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental analyses does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing the additional environmental



analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the FEDERAL REGISTER stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Dated: December 19, 1978.

ARNOLD E. PETTY,  
Acting Associate Director,  
Bureau of Land Management.

Dated: December 22, 1978.

HEATHER L. ROSS,  
Deputy Assistant Secretary  
of the Interior.

IFR Doc. 78-36064 Filed 12-27-78; 8:45 am]

[4310-70-M]

National Park Service

PROPOSED U.S. NOMINATIONS FOR 1979 TO  
THE WORLD HERITAGE LIST

Request For Public Comment

AGENCY: Department of the Interior.  
ACTION: Request for public comment.

SUMMARY: The Department of the Interior requests public comment on the proposed United States nominations for 1979 to the World Heritage List. The Department also solicits from Federal agencies, state and local governments, nongovernment organizations and individual citizens nominations for 1980 and subsequent years.

DATES: Comments on the proposed 1979 nominations should be submitted on or before January 31, 1979. Nominations for 1980 and subsequent years may be submitted at any time; those submitted by June 30, 1979, will be considered for 1980.

ADDRESS COMMENTS TO: Division of International Park Affairs, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Division of International Park Affairs, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Telephone contact: Robert C. Milne or Richard Cook, 202-523-5260.

**SUPPLEMENTARY INFORMATION:** The Convention Concerning the Protection of World Cultural and Natural Heritage, ratified by the United States and forty other Nations as of this date, establishes a means by which natural and cultural areas of outstanding universal value to mankind may be recognized and protected.

Sites may be identified and nominated by States Parties for inclusion on the World Heritage List. The twenty-one-nation World Heritage Committee then judges the nominations against established criteria.

The State Party nominating a site for inclusion on the World Heritage List assumes primary responsibility for taking all necessary and appropriate legal, scientific, technical, administrative and financial measures for the protection, conservation, presentation, rehabilitation and transmission to future generations of the property it nominates. For property in the United States not in Federal ownership, arrangements would have to be made with the owner or owners—whether state or local governments or private citizens—to guarantee the integrity of the site in perpetuity before it could be nominated.

In the United States, the Secretary of the Interior has been charged with implementation of the Convention, including development of U.S. nominations. Recommendations on the proposed nominations are made to the Secretary by an interagency panel including members from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the Fish and Wildlife Service, and the Heritage Conservation and Recreation Service of the Department of the Interior; the President's Council on Environmental Quality; the Advisory Council on Historic Preservation; and the Department of State.

The World Heritage Committee at its meeting in Washington, D.C., in September 1978 accepted the first two United States nominations to the World Heritage List—Yellowstone National Park as a natural site and Mesa Verde National Park as a cultural site.

Ten other natural and cultural sites were accepted for inclusion on this list. The natural sites were Nahanni National Park, Canada; the Galapagos Islands, Ecuador; and Simien National Park, Ethiopia. The cultural sites were L'Anse Aux Meadows National Historic Park, Canada; the City of Quito, Ecuador; the Rock Hewn Churches of Lalibela, Ethiopia; the Aachen Cathedral, Federal Republic of Germany; Cracov's Historical and Architectural Urban Centre, Polish People's Republic; the Wieliczka Salt Mine, Polish People's Republic; and the Island of Goree, Republic of Senegal.

The criteria for the selection of natural sites are: Outstanding universal value will be recognized when a natural heritage property submitted for inclusion in the World Heritage List is found to meet one or more of the following standards. Therefore these properties should:

1. Be outstanding examples representing the major stages of the earth's evolutionary history. This would include sites which represent the major "eras" of geological history such as "the age of reptiles" where the development of the planet's natural diversity can well be demonstrated and as the "ice age" where early man and his environment underwent major changes;

2. Be outstanding examples representing significant on-going geological processes, biological evolution and man's interaction with his natural environment. As distinct from the periods of the earth's development this focuses upon on-going processes in the development of communities of plants and animals, landforms and marine and fresh water bodies. They would include for example a) as geological processes, glaciation and volcanism, b) as biological evolution, biomes such as tropical rainforests, deserts and tundra, c) as interaction between man and his natural environment, terraced agricultural landscapes;

3. Contain unique, rare or superlative natural phenomena, formations or features or areas of exceptional natural beauty, such as superlative examples of the ecosystems most important to man, natural features (rivers, mountains, waterfalls) spectacles presented by great concentrations of animals, sweeping vistas covered by natural vegetation and exceptional combinations of natural and cultural elements.

4. Be habitats where populations of rare or endangered species of plants and animals still survive. This would include those areas where concentrations of plants and animals of universal interest and significance are found.

It should be realized that individual sites may not possess the most spectacular or outstanding single example of the above, but when the sites are viewed in a broader perspective with a complex of many surrounding features of significance, the entire area may qualify to demonstrate an array of features of global significance.

In addition to the above criteria, the sites should also meet the conditions of integrity.

5. The areas described in (1) should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself and samples of cutting patterns, deposition and colonization

(striations, Moraines, pioneer stages of plant succession, etc.);

6. The areas described in (2) should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rainforest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the systems;

7. The areas described in (3) should contain those ecosystem components required for the continuity of the species or of the objects to be conserved. This will vary according to individual cases; for example, the protected area for a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would be provided with control over siltation or pollution through the stream flow or ocean currents which provide its nutrients;

8. The areas described in (4) should be of sufficient size and contain the necessary habitat requirements for the survival of the species.

The criteria for the selection of cultural sites are: A property (monument, group of buildings, site) submitted for inclusion in the World Heritage List should meet one or more of the following standards.

1. Represent a unique artistic or aesthetic achievement, as a masterpiece of the human creative spirit;

2. Be of outstanding importance owing to its influence, over a span of time or within a cultural area of the world, on subsequent developments in architecture, immovable monumental sculpture, garden and landscape design, or human settlements;

3. Be unique, extremely rare or of great antiquity;

4. Be among the most characteristic examples of a type of structure, the type representing an important cultural, social, artistic, technological or industrial development;

5. Be a characteristic example of a significant traditional style of architecture, method of construction, or human settlement, that is fragile by nature or has become vulnerable under the impact of irreversible socio-cultural or economic change.

6. Be most importantly associated with ideas or beliefs, with events or with persons, of outstanding historical importance or significance.

In every case, consideration should be given to the state of preservation of the property (which should be evaluated relatively, that is, in relation to property dating from the same period and of the same type and category). In addition, the property should meet the test of authenticity in design, materials, workmanship, and setting; au-

thenticity does not limit consideration to original form and structure but includes all subsequent modifications and additions, over the course of time, which in themselves possess artistic or historical values.

The natural sites being proposed for nomination by the United States in 1979 are: Grand Canyon National Park, Everglades National Park, Redwoods National Park, and the St. Elias-Wrangell area of Alaska (jointly with the Kluane National Park of Canada).

The cultural sites being proposed for nomination by the United States in 1979 are Independence Hall National Historical Park, the Edison Laboratory, and the Wainwright Building.

DAVID F. HALES,  
Deputy Assistant Secretary for  
Fish and Wildlife and Parks,  
Department of the Interior and  
Chairman, World Heritage  
Committee.

DECEMBER 20, 1978.

IFR Doc. 78-36077 Filed 12-27-78; 8:45 am]

[7020-02-M]

## INTERNATIONAL TRADE COMMISSION

### CERTAIN REPLICA BLACK POWDER FIREARMS

#### Issuance of Consent Order and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of Consent Order and Termination of Investigation No. 603-TA-4, Certain Replica Black Powder Firearms.

Notice is hereby given that the Commission, having on November 9, 1978, published for comment a consent order agreement between Connecticut Valley Arms, Inc., Saybrook Road, Haddam Connecticut, and the Commission investigative attorney, Louis S. Mastriani, incorporating the attached consent order (43 F.R. 53065, Nov. 15, 1978), and having received no comments thereon, hereby finds the attached consent order to be in the public interest, issues the attached consent order as final, and terminates this investigation.

AUTHORITY: The authority for issuance of the consent order is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 603 of the Trade Act of 1974 (19 U.S.C. 2482).

**SUPPLEMENTARY INFORMATION:** The consent order directs Connecticut Valley Arms, Inc., to cease and desist from labeling and advertising its "Mountain Rifle" and "Mountain Pistol" as "Made in USA" until such

time as these articles are substantially manufactured in the United States. Compliance with the consent order is required after December 31, 1978, and a notarized affidavit which describes the extent and manner of compliance must be filed with the Commission by Connecticut Valley Arms, Inc., by January 10, 1979. The affidavit will be reviewed by the Commission in order to determine whether further reporting is necessary. Failure to comply with the order may result in proceedings before the Commission to determine what, if any, sanctions may issue, including a possible order of exclusion from entry pursuant to section 337(d). The consent order agreement defines and describes the parties which have agreed to be bound thereby, as well as the subject imported articles. Connecticut Valley Arms, Inc., has acceded to the Commission's jurisdiction, and has waived all procedural requirements under section 337, including the right to judicial review of the consent order or to otherwise challenge or contest the validity of the consent order.

By order of the Commission.

Issued: December 22, 1978.

KENNETH R. MASON,  
Secretary.

Before the UNITED STATES INTERNATIONAL  
TRADE COMMISSION, Washington, D.C.

In the matter of Certain Replica Black  
Powder Firearms. Preliminary Investigation  
603-TA-4.

#### ORDER

IT IS ORDERED that subsequent to December 31, 1978, Connecticut Valley Arms shall not advertise, nor otherwise affirmatively represent, its "Mountain Rifle", "Mountain Pistol" or any other replica firearm as "Made in U.S.A.", unless and until such time that each such article is substantially manufactured within the United States. Nor shall Connecticut Valley Arms induce, whether directly or indirectly, any manufacturer, importer, or exporter to engage in the foregoing proscribed activities.

#### II

Connecticut Valley Arms, by its chief executive officer, shall file a properly notarized affidavit covering the period from the date this order becomes final through December 31, 1978, containing therein a detailed statement describing the extent of compliance with this Consent Order. This affidavit and report shall be filed with the Commission by January 10, 1979. If Connecticut Valley Arms fails to file its report as required or if the Commission has sufficient reason to believe, on the basis of the foregoing report, that the terms of this Order have been violated, the Commission reserves the right to require such additional reports as are deemed necessary.

#### III

The reporting of requirement of paragraph II of this Order will be reviewed by the Commission after the report due in 1979



is received in order to ascertain whether further reporting by Connecticut Valley Arms is necessary, as provided in paragraph II.

## IV

For the purpose of securing compliance with this Order and during the period ending December 31, 1979, or any further period of reporting resulting from a determination by the Commission that it has sufficient reason to believe that Connecticut Valley Arms is in violation of this Order or has failed to file its report as provided in paragraph II of this Order, duly authorized representatives of the Commission shall, upon written request and on reasonable notice to Connecticut Valley Arms mailed to its principal office, be permitted reasonable access, during the office hours of the company, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the company solely for the purpose of verifying any matter contained in the reports required under paragraph II of the Order. Duly authorized representative of the Commission shall also be permitted to interview appropriate officers and employees of Connecticut Valley Arms, who may have counsel present, regarding any such matters. Such verification and interviews are subject to any recognized privilege under the laws of the United States and are also subject to the reasonable convenience of the company.

Confidential information obtained by the means provided in paragraphs II, III and IV, above, shall only be made available to the Commission or its representatives and shall not be divulged by any representative of the Commission, to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Order or as otherwise required by law, upon ten (10) days written notice to Connecticut Valley Arms.

This Order shall become effective upon the date of its publication in the *FEDERAL REGISTER*.

By order of the Commission.  
Issued: December 22, 1978.

KENNETH R. MASON,  
Secretary.

(FR Doc. 78-36213 Filed 12-27-78; 8:45 am)

## [7020-02-M]

(Investigation No. 337-TA-61)

**CERTAIN COMPACT CYCLOTRONS WITH A PRE-SEPTUM**  
Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on November 20, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of The Cyclotron Corporation, 950 Gilman Street, Berkeley, California 94710, alleging that unfair methods of competi-

tion and unfair acts exist in the importation of a certain compact cyclotron with a pre-septum into the United States, or in its sale, by reason of the alleged coverage of such compact cyclotron with a pre-septum by the claims of U.S. Letters Patent 3,725,709.

The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests both temporary and permanent exclusion of said imports from entry into the United States.

Having considered the complaint, the U.S. International Trade Commission, on December 19, 1978, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c), whether there is, or there is reason to believe that there is, a violation of subsection (a) of this section in the unauthorized importation of certain compact cyclotrons with a pre-septum or components of said cyclotrons into the United States, or in their sale, by reason of the alleged coverage of such compact cyclotrons with a pre-septum by the claims of U.S. Letters Patent 3,725,709, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties:

(a) The complainant is—

The Cyclotron Corporation, 950 Gilman Street, Berkeley, California 94710.

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint and this notice are to be served:

Instrument AB Scanditronix, Eskadervagen 16, S-18354, Taby, Sweden. Medi-Physics, Inc., 5801 Christie Avenue, Emeryville, California 94608.

Nucletronix, Inc., Birch Road, Middleton, Massachusetts 01949.

(c) Wilhelm A. Zeithler, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation;

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW.,

Washington D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the U.S. International Trade Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and will authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and in this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City office, 6 World Trade Center, New York, New York 10048.

By order of the Commission.  
Issued: December 22, 1978.

KENNETH R. MASON,  
Secretary.

(FR Doc. 78-36214 Filed 12-27-78; 8:45 am)

## [4410-01-M]

## DEPARTMENT OF JUSTICE

## U.S. CIRCUIT JUDGE NOMINATING COMMISSION, TENTH CIRCUIT PANEL

## Meetings

The following is a schedule of meetings for the nominating panel for the Tenth Circuit of the United States Circuit Judge Nominating Commission.

The first meeting will be held on January 19-20, 1979, at the U.S. Courthouse, 1929 Sherman Street, Denver, Colorado at 9:00 a.m.

The second meeting will be held on January 26-27, 1979, at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, at 9:00 a.m.

These meetings will be closed to the public pursuant to P.L. 92-463, Section 10(D) as amended. (CF U.S.C. 552b (c)(6).)

Dated: December 21, 1978.

JOSEPH A. SANCHES,  
Advisory Committee  
Management Officer.

(FR Doc. 78-36057 Filed 12-27-78; 8:45 am)

## [4410-01-M]

## U.S. CIRCUIT JUDGE NOMINATING COMMISSION, THIRD CIRCUIT PANEL

## Meetings

The following is the schedule of meetings for the nominating panel for the Third Circuit of the United States Circuit Judge Nominating Commission: 1) January 19, 1979, to review the applications; 2) January 23-24, 1979, to interview candidates for the vacancy. Both meetings will be held in the Third Circuit Judicial Conference Room, 20th floor, United States Courthouse, 6th and Market Streets, Philadelphia, Pennsylvania at 10 a.m.

The meetings will be closed to the public pursuant to Pub. L. 92-463, Section 10(D) as amended. (CF U.S.C. 552b(c)(6).)

Dated: December 21, 1978.

JOSEPH A. SANCHES,  
Advisory Committee  
Management Officer.

(FR Doc. 36058 Filed 12-27-78; 8:45 am)

## [4410-01-M]

## U.S. CIRCUIT JUDGE NOMINATING COMMISSION, SECOND CIRCUIT PANEL

## Meeting

The first meeting of the nominating panel for the Second Circuit of the United States Circuit Judge Nominating Commission will be held on Wednesday, January 3, 1979, at 10:00 a.m. at the Association of the Bar of the City of New York, 42 West 44th Street, New York, New York. This meeting will be open to the public; however, due to administrative error, this notice has not been published 15 days prior to the meeting date.

Dated: December 21, 1978.

JOSEPH A. SANCHES,  
Advisory Committee  
Management Officer.

(FR Doc. 78-36059 Filed 12-27-78; 8:45 am)

## [4410-01-M]

## U.S. CIRCUIT JUDGE NOMINATING COMMISSION FIRST CIRCUIT PANEL

## Meeting

The first meeting of the nominating panel for the First Circuit of the United States Circuit Judge Nominat-

ing Commission will be held on January 6, 1979, at the Federal Courthouse, Post Office Square, Boston, Massachusetts in Room 1620 at 9:30 a.m.

The purpose of the meeting is to provide the panel with a history of the Court; an analysis of current needs and workload; an explanation of merit selection and a meeting with the Chief Judge to discuss qualifications which should be sought in selecting candidates.

The meeting will be open to the public but because of the short time allotted the panel to make its selection, it was not possible to provide a full 15 day notice.

JOSEPH A. SANCHES,  
Advisory Committee  
Management Officer.

December 21, 1978.

(FR Doc. 78-36060 Filed 12-27-78; 8:45 am)

## [4510-23-M]

## DEPARTMENT OF LABOR

## NATIONAL ADVISORY COMMITTEE FOR WOMEN

## Meeting

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the National Advisory Committee for Women.

Date and Time: January 11 and 12, 1979 10 a.m. to 5 p.m. each day.

Place: Conference Room N4437 ABC, January 11, 1979, Conference Room S4215 ABC, January 12, 1979. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Purpose: This is a regular meeting of the National Advisory Committee for Women.

The Committee will meet with the President of the United States to advise him of their concerns about the Administration's budget priorities and legislative package. The agenda for the meeting will focus on the projected activities of the Committee's Action Work Groups.

Dated: December 21, 1978.

ELLEN M. MCGOVERN,  
Executive Director.

(FR Doc. 78-36141 Filed 12-27-78; 8:45 am)

## [7510-01-M]

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (78-70)]

## AD HOC INFORMAL TASK FORCE ON COMPARATIVE NATIONAL SPACE PROGRAMS, NASA ADVISORY COUNCIL

## Meeting

The Ad Hoc Informal Task Force on Comparative National Space Programs of the NASA Advisory Council will meet on January 19, 1979, from 9:00 a.m. to 4:30 p.m. The meeting will be held at the University of Southern California, Population Research Laboratory, Room 385, 3716 South Hope, Los Angeles, CA, 90007. The meeting will be open to the public up to the seating capacity of the room (about 50 persons, including task force members). Visitors will be requested to sign a visitor's register.

This task force, chaired by Dr. Kingsley Davis, consists of six members drawn from the membership of the NASA Advisory Council, and was established to carry out a review of the United States' relative position in international space affairs. The agenda for the meeting is as follows:

FRIDAY, JANUARY 19, 1979

9:00 a.m.—Chairperson's Opening Remarks  
9:15 a.m.—United States and Soviet Progress in Space  
10:45 a.m.—Task Force Reports  
3:00 p.m.—Discussion  
4:30 p.m.—Adjourn

For further information regarding the meeting, contact the Executive Secretary of the Task Force, Ms. Lisa Shaffer, NASA Headquarters, Washington, DC 20546, telephone (202) 755-3883.

ARNOLD W. FRUTKIN,  
Associate Administrator for  
External Relations.

DECEMBER 20, 1978.

(FR Doc. 78-36081 Filed 12-27-78; 8:45 a.m.)

## [7510-01-M]

[Notice 78-68]

## CLOSED MEETING ACTIVITIES OF ADVISORY COMMITTEES

## Public Availability of Reports

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 of October 6, 1972, and Office of Management and Budget Circular No. A-63 Revised of March 27, 1974, and the NASA advisory committees which held closed or partially closed meetings in 1977, consistent with the policy of 5 U.S.C. 552(b) and, effective March 12, 1977, 5 U.S.C. 552b(c), have prepared reports on the activities of these meet-



ings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Exchange and Gift Division, Federal Advisory Committee Desk and NASA Headquarters, Headquarters Information Center.

The names of the advisory committees are listed below:

Applications Steering Committee, Atmospheric Cloud Physics Laboratory (ACPL) Advisory Subcommittee;  
Applications Steering Committee, Space Processing Ad Hoc Advisory Subcommittee;  
NASA Historical Advisory Committee;  
NASA Wage Committee;  
Research and Technology Advisory Council;  
Space Science Steering Committee, Jupiter Orbiter Probe 1981 (JOP81) Ad Hoc Advisory Subcommittee;  
Space Science Steering Committee, Out-Of-Ecliptic (OOE) Mission Ad Hoc Advisory Subcommittee;  
Space Science Steering Committee, Space Telescope Ad Hoc Advisory Subcommittee;  
Space Technology Steering Committee and Research and Technology Advisory Council, Long Duration Exposure Facility (LDEF) Experiment Review Ad Hoc Advisory Subcommittee.

ARNOLD W. FRUTKIN,  
Acting Associate Administrator  
for External Relations.

DECEMBER 15, 1978.

[FR Doc. 78-36079 Filed 12-27-78; 8:45 am]

#### [7510-01-M]

[Notice 78-69]

#### NASA ADVISORY COUNCIL (NAC) HISTORICAL ADVISORY COMMITTEE

##### Meeting

The above named committee will meet from 8:45 a.m. to 4 p.m. February 3, 1979, at Kennedy Space Center, Florida (Headquarters Building, Room 2229). Except for the closed session (1:30 to 2:45 p.m.), the public will be admitted up to the seating capacity of the room, which is about 40 persons.

The committee will review NASA historical activities of the past year, status of current projects, and possible future projects. Distribution of NASA histories and preparation of the annual Aeronautics and Space Report of the President will be discussed.

During the closed session, the committee will consider and make recommendations on candidates for undertaking various NASA historical activities. The committee will also recommend individuals to fill vacancies on the committee. The personal and professional qualifications of the candidates, who are not members of the committee, will be candidly discussed and appraised. Public discussion of these matters would invade the privacy of the candidates and other individ-

uals involved. Since this committee session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the session will be closed to the public.

For further information, call Monte D. Wright (202) 755-3612.

ARNOLD W. FRUTKIN,  
Associate Administrator for  
External Relations.

DECEMBER 20, 1978.

[FR Doc. 78-36080 Filed 12-27-78; 8:45 am]

#### [7537-01-M]

#### NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

##### MUSEUM ADVISORY PANEL

##### Meeting

Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts will be held January 16, 1979, from 9:00 a.m. to 5:30 p.m., and January 17, 1979, from 9:00 a.m. to 5:30 p.m., in room 1422, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

A portion of this meeting will be open to the public on January 16, 1979, from 9:00 a.m. to 5:30 p.m. The topic of discussion will be Policy and Guidelines.

The remaining sessions of this meeting on January 17, 1979, from 9:00 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,  
Director, Office of Council and  
Panel Operations, National  
Endowment for the Arts.

[FR Doc. 78-36118 Filed 12-28-78; 8:45 am]

#### [4910-58-M]

#### NATIONAL TRANSPORTATION SAFETY BOARD

(N-AR 78-52)

#### ACCIDENT REPORTS; SAFETY RECOMMENDATION RESPONSES

##### Availability

##### ACCIDENT REPORTS—BRIEF FORMAT

The National Transportation Safety Board has determined that "air-frame icing" was involved in the probable cause of a Cessna 180 fatal crash that occurred at the Berlin Municipal Airport in New Hampshire last winter. The pilot and two passengers were killed in that crash and the aircraft destroyed.

The Safety Board report was one of 590 selected general aviation accidents and 20 air carrier accidents in computer printout form contained in Issue Number 5 of 1977 accidents, "Aircraft Accident Reports, Brief Format, U.S. Civil Aviation," which was released December 20. This publication, report No. NTSB-BA-78-5, is normally issued five times each year and presents the facts, conditions, circumstances, and probable cause(s) for each accident. Additional statistical information is tabulated by type of accident, phase of operation, kind of flying, injury index, aircraft damage, conditions of light, pilot certificate, injuries, and causal factors.

As indicated in NTSB Press Release 78-83/2393 which accompanied the release of Issue Number 5, the Safety Board cited the pilot in the New Hampshire accident for inadequate preflight preparation and failure to abort takeoff after an excessive 3,000-foot ground run. Also cited as probable cause was "airframe ice," the Board noting that the "ice and snow (was) not removed from aircraft." The Board also noted that there was no seat for the second passenger, although this was not found to be a causal factor.

The Board pointed out that adhesion of snow or ice on the wings and tail surfaces of an airplane causes an increase in drag and a simultaneous loss of lift. This decrease in aerodynamic performance can lead to loss of control. Unfortunately, the Board said, this tragic fact has been demonstrated too often. In the last 5 years, from 1973 through 1977, airframe ice has been found as a causal factor in 183 accidents. Of these 67 were fatal accidents, resulting in the death of 176 people.

Findings in the New Hampshire report reveal that certain potential hazards associated with winter flight operations are not yet fully understood by many pilots. Consequently,

the Board urged general aviation pilots, now facing the onset of winter weather across most of the United States, to "pass the word" that ice, snow, or frost on the wings prior to takeoff is definitely a no-go item.

"Aircraft Accident/Incident Reports, Brief Format Supplemental Issue, 1977 Accidents," report No. NTSB-BA-78-6, is also now available. This publication contains reports of aircraft accidents and incidents that occurred in 1977 but not included in a prior issue of briefs. This publication reports on one U.S. air carrier accident, 26 U.S. air carrier incidents, 44 general aviation accidents occurring on U.S. soil, 27 general aviation accidents occurring on foreign soil, and 24 general aviation incidents. Four foreign air carrier accidents, two foreign air carrier incidents and 17 foreign general aviation accidents that were investigated by the Safety Board are also included. This is the final issue of reports on accidents that occurred in calendar year 1977.

In addition, this supplemental issue contains several statistical tables which tabulate and summarize selected accident information, such as type of accident, phase of operation, injuries, cause/factor and pilot certificates for all U.S. general aviation accidents occurring last year.

"Railroad Accident Report, Brief Format, Issue Number 2-1977" was released by the Safety Board on December 14. The report, No. NTSB-RAB-78-3, contains the reports of 116 U.S. railroad accidents arranged in chronological order; tabulations of selected accident information include (1) types of accidents broken down by carriers, (2) casualties broken down by types of accidents and classes of persons, and (3) causal factors arranged categorically and broken down by types of accidents. The Safety Board makes a finding of probable cause on railroad investigations which involve a fatality, a passenger train accident, or substantial property damage.

NOTE: The brief reports in these three publications contain essential information; more detailed data may be obtained from the original factual reports on file in the Washington office of the Safety Board. Upon request, factual reports will be reproduced commercially at an average cost of 17 cents per page for printed matter, \$5 per page for black-and-white photographs, and \$4 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include this information: (1) Date and place of occurrence, (2) type of aircraft and registration number, and (3) name of pilot.

Copies of these publications may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

#### RESPONSES TO SAFETY RECOMMENDATIONS

M-78-33 and 34.—The National Oceanic and Atmospheric Administration (NOAA) on December 14 responded to the Safety Board's comments of October 25 concerning NOAA's initial response of last August 8 (43 FR 38981, August 31, 1978). The recommendations were developed as a result of the investigation and analysis of the sinking of the SS EDMUND FITZGERALD in Lake Superior on November 10, 1975.

In its October 25 letter, the Safety Board states that the plotting of dangerous shoal areas on the chartlets as discussed by NOAA is a positive step. However, the Board said, a plot of a ten-fathom contour would be of greater benefit to the Great Lakes mariner. The contour showing the ten-fathom line will give a more positive delineation of the shoal area. The Board believes that this proposal should be considered before publication of the new charts.

The Board believes that a greater sense of urgency should be exhibited in NOAA's efforts to improve modeling technology and the data base for significant wave height forecasts. Based on the great difference in the forecast vs. observed wave height at the time of the FITZGERALD sinking, an intense effort should be massed to expand the state-of-the-art, to move beyond reasonable forecasts, and to approach a high degree of accuracy, particularly during periods of high wind velocities.

NOAA's December 14 response indicates agreement with the Safety Board's proposal to give a more positive delineation of the shoal areas in the vicinity of Southwest Bank and Caribou Island. Such a plot will be of additional assistance to the Great Lakes mariner and NOAA plans to add these contours to the next edition of the affected charts of Lake Superior.

As to the Board's second point—urgency on improvements in predicting wave heights on the Great Lakes—NOAA reports that since the FITZGERALD sinking its wave prediction model has been improved by using a new finer grid mesh wind forecast model. Also, NOAA will begin deployment of eight environmental data buoys in the Great Lakes, the first three expected to be operational in 1979. NOAA states that observations from these buoys should significantly improve the determination of the wind field over the Lakes and result in more accurate wave predictions.

R-77-9 and 10.—Letter of December 15 from the Federal Railroad Administration (FRA) is in response to recommendations developed as a result of investigation of the Chicago and North Western Transportation Company

freight train derailments and collision at Glen Ellyn, Ill., May 16, 1976.

Recommendation R-77-9 asked FRA to require by regulation that persons performing train dispatching functions maintain a record of trains and cars that are carrying hazardous materials and of current methods of and procedures for, containment of these materials in the event of a mishap and communicate this information to public safety officials immediately after they learn of a train accident.

FRA's response indicates that this would not be a cost beneficial action, and that to implement such a recommendation would be redundant and would not measurably increase the present degree of safety afforded by existing regulations. Federal regulations now require the stenciling of the hazardous materials name on those tank cars transporting materials with the greatest degree of hazard (Part 172.330). Further, all cars transporting hazardous materials must be properly placarded (Part 172.500). Hazardous materials must be described on the shipping papers (Part 172.202), and shipping papers for hazardous materials must be in the possession of a member of the train crew (Part 174.26). FRA believes public safety officials should be able to obtain the necessary safety information from at least one of these four sources.

FRA reports that the Missouri Pacific Railroad Company (MP) has a system whereby train contents are automatically printed with a list of hazardous materials in each train along with the basic information for emergency response, available to MP train dispatchers on request. The system is extremely expensive, requiring a sophisticated central computer and a network of communication lines ending at a terminal at each agency and/or dispatcher station, and FRA believes that to impose the cost of this system on all rail carriers cannot be justified at this time.

Recommendation R-77-10 asked FRA to require the Chicago and North Western Transportation Company to maintain its tracks to the specifications of the Federal Track Standards for each class and not increase train speeds until the track is adequate for such speeds.

In response, FRA states that Federal Track Safety Standards do require carriers to maintain their tracks in compliance with the regulations. Section 213.5, Responsibility of Track Owner, requires any owner of track who knows that the track does not comply with the requirements to bring the track into compliance or halt operations over that track. The owner, under § 213.7, also is responsible for designating qualified persons to inspect the track for defects. The Stand-



ards are very specific as to the authority the inspector must have to prescribe remedial action to correct or safely compensate for those deviations found.

Through its monitoring program, FRA enforces these requirements. The FRA track inspector reviews the carrier's inspection report and conducts on-the-ground spot observations at selected locations to determine the degree of compliance. If items of noncompliance are found, further action is taken. At present, FRA believes this is the most effective approach to requiring carriers to maintain track to the specifications of the Federal Track Safety Standards.

NOTE: Copies of letters in response to recommendations may be obtained free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington Safety Board, Washington, D.C. 20594.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,  
Federal Register Liaison Officer.

DECEMBER 22, 1978.

[FR Doc. 78-36075 Filed 12-27-78; 8:45 am]

[8010-01-M]

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-15415; File No. SR-Amex-78-27)

### AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 24, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

#### STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Board of Governors of the American Stock Exchange has approved the following Resolution and rule amendment. (Italics indicate words to be added.)

#### A. RESOLUTION

Resolved, that the present transaction charge imposed by the Exchange pursuant to Article VII, Section 4 of the Exchange Constitution be increased by the amount of 12¢ for each round-lot purchase and each round-lot

sale in any equity security executed on the Exchange; and be it

Further resolved, that payment of such increased charge by members and member organizations to the Exchange be waived in all instances where the transaction is cleared through a registered clearing agency which has agreed to collect and pay over to the Exchange an amount equal to 12¢ with respect to such transaction.

B. Rule 700 (a) The term "registered clearing agency" means any clearing agency (i) duly registered with the Securities and Exchange Commission, (ii) willing to supply the Exchange with data reasonably requested in order to permit the Exchange to enforce compliance by its members and member organizations with the provisions of the Securities Exchange Act of 1934, the rules and regulations thereunder, and the rules of the Exchange, and (iii) having:

(A) the capacity to compare, clear and settle any and all securities transactions effected on the Exchange, or

(B) the appropriate interfacing capacity to compare, clear and/or settle securities transactions effected on the Exchange, with a clearing agency meeting the requirements of the preceding subparagraph. If such clearing agency does not have the appropriate interfacing capacity with respect to all such functions (comparison, clearing and settlement), or with respect to all securities admitted to dealings on the Exchange, it shall be included within the term "registered clearing agency" only to the extent of the functions or the securities as to which it does have such interfacing capacity.

#### STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

When the Amex, NYSE and NASD determined to consolidate their respective clearing affiliates into a single clearing entity in 1977, it was recognized that these affiliates had been a source of revenues which were used to pay in part for the self-regulatory activities carried on by their parent organizations. While the new consolidated clearing entity, National Securities Clearing Corporation, was intended to be user controlled and operated for the sole benefit of the member firm community, it was felt that the two exchanges and the NASD should continue to receive some revenues from clearing operations to help cover regulatory costs. Therefore, the agreements establishing NSCC provided that the Amex NYSE and NASD should each be paid 12¢ a side for each round-lot transaction executed in their respective markets and cleared through NSCC. There is a \$550,000 annual limit during the five-year term of the contract, with provision for

review of the charge after the first two years and each year thereafter.

At the request of the SEC, the Exchange has adopted amendments to its clearing rules which will allow members to compare and settle through any registered clearing agency having the appropriate facilities. As a result of this change, the Exchange would not receive the 12¢ revenue to the extent members use clearing agencies other than NSCC. It is therefore proposed that the 12¢ charge be imposed by the Exchange, payable either directly to the Exchange or to any clearing agency agreeing to collect the charge and remit it to the Exchange.

In order to carry out its regulatory functions relating to market surveillance (as well as collect the 12¢ charge), the Exchange must receive trade data from any clearing agency used by members. The Exchange therefore further proposes to amend its clearing rules to provide for the furnishing of this data to the Exchange.

The SEC has approved a NYSE proposal which is similar to the above proposal (SR-NYSE-77-33).

The adoption of an alternate method for collection of the 12¢ charge and provision for the furnishing of necessary trade data to the Exchange will assure an equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers and others using its facilities, as required by section 6(b)(4) of the Act.

#### COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PRO- POSED RULE CHANGE

No comments were solicited or received with respect to the proposed rule change.

#### BURDEN ON COMPETITION

The Annex has determined that no burden on competition will be imposed by the proposed rule change.

Within thirty-five days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and argu-

ments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

DECEMBER 18, 1978.

[FR Doc. 78-36093 Filed 12-27-78; 8:45 am]

[8010-01-M]

(Release No. 20829; 70-6246)

### ARKANSA POWER & LIGHT CO.

Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

DECEMBER 13, 1978.

Notice is hereby given that Arkansas Power & Light Company ("Arkansas"), First National Building, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Sections 6(a) and 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 23, 24 and 50 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application which is summarized below, for a complete statement of the proposed transactions.

Arkansas proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 promulgated under the Act, \$60,000,000 principal amount of its First Mortgage Bonds ("Bonds") of a series having a term of not less than five nor more than thirty years. Arkansas will determine, and give notice of, the maturity date of the bonds not later than 12:00 p.m. on the third business day preceding the day fixed for the presentation of bids. The interest rate on the bonds (which will be a multiple of  $\frac{1}{8}$  of 1%) and the price, exclusive of accrued interest, to be paid to Arkansas (which will be not less than 100% nor more than 102 $\frac{1}{2}$ %

of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under Arkansas' Mortgage and Deed of Trust dated as of October 1, 1944, to Morgan Guaranty Trust Company of New York, Trustee, as heretofore supplemented and as to be further supplemented by a Thirty-first Supplemental Indenture to be dated as of February 1, 1978, which will include a prohibition for a period of not more than five years against refunding the bonds with the proceeds of funds borrowed at a lower effective interest cost.

Prior to the effective date of Arkansas' Twenty-eighth Supplemental Indenture dated as of July 1, 1975, Arkansas' Mortgage and Deed of Trust as amended provided that in computation of the "two-times interest" coverage test for the issuance of additional bonds, the amount of the company's nonoperating income (as defined) that may be taken into account would not exceed 15% of the sum of net operating income plus nonoperating income. This provision differs from the analogous provision of the Commission's Statement of Policy with respect to First Mortgage Bonds ("Policy statement") adopted February 16, 1956 (HCAR No. 13105), which restricts the inclusion of nonoperating income to an amount not exceeding 10% of operating income. In recent years, the Indenture provision has resulted in higher computed interest coverage than would have resulted from the provision prescribed by the Policy Statement.

As a first step toward conforming the Indenture provision with that of the Policy Statement, Arkansas' Twenty-eighth Supplemental Indenture dated as of July 1, 1975, amended the Indenture provision so as to provide that, effective with the first series of bonds to be issued after December 31, 1975, the amount of includable nonoperating income would not exceed 14% of the sum of net operating income plus nonoperating income. Arkansas' Twenty-ninth Supplemental Indenture reduced the figure to 13%, and Arkansas' Thirtieth Supplemental Indenture reduce the figure to 12%. It is proposed in the instant filing that Arkansas' Thirty-first Supplemental Indenture, to be dated as of February 1, 1979, provide that, effective with the first series of bonds to be issued after February 28, 1979, the amount of includable nonoperating income shall not exceed 11% of the sum of net operating income plus nonoperating income. It is contemplated that said percentage will be successively reduced further in further supplemental indentures so that the Indenture provision (including, ultimately, the base to which the percentages shall apply) will finally conform in substance with

the analogous provision of the Policy Statement.

Arkansas also proposes to issue and sell at competitive bidding up to 600,000 shares of a new series of preferred stock, par value \$25 per share ("Preferred Stock"). The dividend rate of the Preferred Stock (which will be a multiple of  $\frac{1}{4}$  of 1%) and the price to be paid to Arkansas for the Preferred Stock (which will not less than \$25 nor more than \$25.70 per share, plus accumulated dividends, if any) will be determined by competitive bidding. The terms of the Preferred Stock will include a prohibition, until February 1, 1984, against refunding the Preferred Stock, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost, or from the issuance of other stocks which rank prior to or on a parity with the Preferred Stock as to dividends or assets at a lower effective dividend cost. The Preferred Stock will be created by appropriate corporate action and, except as to designation, dividend rate, the date from which dividends commence to accumulate, redemption premiums, the terms and conditions of redemption, and matters pertaining to par value and certain voting rights, will have the same characteristics as, and rank *pari passu* with, the presently outstanding preferred stock of Arkansas.

The sale of the Bonds and the sale of the Preferred Stock are separate transactions not contingent one upon the other. Arkansas proposes to use the net proceeds derived from the issuance and sale of the Bonds and the Preferred Stock for the payment of short-term indebtedness incurred or estimated to be incurred and for financing its 1979 construction program, such program estimated to be \$212,700,000.

The fees, commissions, and expenses incurred or to be incurred in connection with the proposed transaction total \$250,000 (\$195,000 in respect of the Bonds, and \$55,000 in respect of the Preferred Stock), including counsel fees of \$69,000, printing and engraving costs of \$53,000, rating fees of \$23,500, accountants' fees of \$17,000, trustee's fees of \$20,000, and miscellaneous expenses of \$20,586. In addition, the fee of counsel for the successful bidders is estimated at \$25,000 (\$16,000 in respect of the Bonds and \$9,000 in respect of the Preferred Stock) and is to be paid by the successful bidders.

The Arkansas Public Service Commission ("APSC") and the Tennessee Public Service Commission ("TPSC") have jurisdiction over the proposed issuance and sale of the Bonds and Preferred Stock. By order dated December 1, 1978, the APSC has approved the foregoing transactions; application



for approval of the transactions is currently pending before the TPSC. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 12, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36082 Filed 12-27-78; 8:45 am)

#### [8010-01-M]

**BOSTON STOCK EXCHANGE, INC. ET AL**  
Applications for Unlisted Trading Privileges  
and of Opportunity for Hearing

DECEMBER 14, 1978.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies set forth below, which securities are listed and registered on one or more other national securities exchanges:

**AMDAHL CORPORATION (DEL.)**,  
Common Stock, \$.05 Par Value—File No. 7-5042.  
**ARROW ELECTRONICS, INC.**, Common  
Stock, \$1 Par Value—File No. 7-5043.

**ARVIN INDUSTRIES, INC. (IND.)**,  
Common Stock, \$2.50 Par Value—File No. 7-5044.  
**DATAPOINT CORPORATION**, Common  
Stock, \$.25 Par Value—File No. 7-5045.  
**GENERAL HOST CORPORATION**,  
Common Stock, \$1 Par Value—File No. 7-5046.  
**ITEL CORPORATION**, Common Stock, \$1  
Par Value—File No. 7-5047.  
**LINCOLN NATIONAL CORPORATION**  
(IND.), Common Stock, \$2.50 Par Value—  
File No. 7-5048.  
**MEMOREX CORPORATION**, Common  
Stock, \$1 Par Value—File No. 7-5049.  
**NLT CORPORATION**, Common Stock, \$5  
Par Value—File No. 7-5050.  
**GENUINE PARTS COMPANY**, Common  
Stock, \$1 Par Value—File No. 7-5050.  
**SYSTRON DONNER CORPORATION**  
(DEL.), Common Stock, No. Par Value—  
File No. 7-5061.  
**TERADYNE, INCORPORATED**, Common  
Stock, \$0.125 Par Value—File No. 7-5062.

Upon receipt of a request, on or before January 14, 1979, from any interested person, the Commission will determine whether the applications with respect to the companies named shall be set down for hearing. Any such request should include a brief statement as to the title of the security in which the person is interested, the nature of his interest in making the request, and the position which he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36083 Filed 12-27-78; 8:45 am)

#### [8010-01-M]

**INVESTORS CORP. OF NORTH CAROLINA**

(Release No. 10523; 811-2452)

DECEMBER 13, 1978.

Notice of filing of an application pursuant to section 8(f) of the act for an order declaring that the applicant has ceased to be an investment company.

Notice is hereby given that Investors Corporation of North Carolina ("Applicant"), a North Carolina Corporation, c/o Robert G. Stockton, Esq. Hudson, Petree, Stockton, Stockton &

Robinson, P.O. Box 2860, Winston-Salem, North Carolina 27102, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, has filed an application on October 23, 1978, and an amendment thereto on December 8, 1978, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that it registered under the Act on January 29, 1974, and that it has issued common stock, such stock having been first effectively registered under the Securities Act of 1933 on June 3, 1974.

According to the application, on November 10, 1977, the Board of Directors of Applicant unanimously resolved to proceed toward liquidation of Applicant and to convert the assets of the Applicant to cash or cash equivalents. Unanimous shareholder consent to the dissolution of Applicant was effected on August 3, 1978. The application further states that the shares of Applicant were redeemed at net asset value by all shareholders except Robert G. Stockton, Jr., ("Stockton") an officer and director of Applicant, who will redeem his shares at net asset value upon completion of the winding up of Applicant's affairs. According to the application, the Applicant has \$10,602.19 in assets, of which \$1,119.62 will be applied to Applicant's outstanding liabilities and the balance represents the cash redemption value of the above mentioned outstanding shares of common stock. The application states that all shareholders, except Stockton have received a distribution in complete liquidation of their interest in Applicant, and that it has no assets (other than those mentioned above), no liabilities (other than those mentioned above), is not a party to any litigation and does not propose engaging in any business activity other than that necessary for the winding up of its affairs. Applicant further represents that any additional expenses in connection with its liquidation will be born by Lexington Management Corporation, its investment adviser.

Section 8(f) provides, in pertinent part, that when the Commission finds, upon application, that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 5, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request of upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36084 Filed 12-27-78; 8:45 am)

#### [8010-01-M]

**MIDWEST STOCK EXCHANGE, INC. ET AL**

Applications for Unlisted Trading Privileges  
and of Opportunity for Hearing

DECEMBER 14, 1978.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

**FLEETWOOD ENTERPRISES, INC. (DE)**,  
Common Stock, \$1.00 Par Value, File No. 7-5033.  
**DANA CORPORATION**, Common Stock,  
\$1.00 Par Value, File No. 7-5034.

Upon receipt of a request, on or before January 14, 1979, from any interested person, the Commission will determine whether the applications with respect to the companies named shall be set down for hearing. Any

such request should include a brief statement as to the title of the security in which the person is interested, the nature of his interest in making the request, and the position which he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36085 Filed 12-27-78; 8:45 a.m.)

#### [8010-01-M]

(Release No. 15411; SR-MSRB-78-8)

**MUNICIPAL SECURITIES RULEMAKING BOARD**

Order Approving Amended Rule Change

DECEMBER 13, 1978.

On May 26, 1978, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(s)(b)(1), and Rule 19b-4 thereunder, copies of a proposed rule change which would establish a comprehensive arbitration code for the municipal securities industry. Notice of the proposed rule change together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 14840 (June 9, 1978)) and by publication in the FEDERAL REGISTER (43 FR 26164 (1978)). On August 25, 1978, the MSRB made a technical amendment to the filing to clarify that the record required to be kept of proceedings before a panel of arbitrators is a verbatim record and that the term "related counterclaim" used in the filing means a counterclaim related to a customer's account(s) with the municipal securities broker or municipal securities dealer. On November 1, 1978, the MSRB filed a second amendment to remove the unanimous voting requirement for an arbitration panel's referral of a matter to an appropriate regulatory authority or organization.<sup>1</sup>

<sup>1</sup>The November 1, 1978, amendment removed all reference to a special voting re-

quirement for such a referral. In filing the amendment, the MSRB stated that in adopting this provision, the Board did not intend to impose a more stringent voting requirement than would otherwise govern under applicable law. The Board has therefore determined to delete this provision in order to avoid the possibility of the provision having such a result.

Sections 15B(b)(2)(C), 15B(b)(2)(D), and 15B(b)(2)(J) of the Act permit the MSRB, by rule, to require the payment of fees in connection with arbitration proceedings. Any fees required by the MSRB to be paid in connection with arbitration must be filed with the Commission, pursuant to Section 19 of the Act.

Under the proposed rule, the MSRB would appoint a seven-member Arbitration Committee, which would include three MSRB members and the Director of Arbitration, who would perform a number of functions related to the conduct of arbitration proceedings.

The Commission has determined that the MSRB's arbitration procedures, which are similar to many of those employed by other self-regulatory organizations, are appropriate. Nevertheless, the Commission and its staff currently are examining the questions raised by the use of customer agreements which require the submission of all future claims to binding arbitration. As a result of this examination of customer arbitration agreements, the Commission may recommend or require that the MSRB consider modifications of, or additions to, the rules here approved.

requirement for such a referral. In filing the amendment, the MSRB stated that

In adopting this provision, the Board did not intend to impose a more stringent voting requirement than would otherwise govern under applicable law. The Board has therefore determined to delete this provision in order to avoid the possibility of the provision having such a result.

Sections 15B(b)(2)(C), 15B(b)(2)(D), and 15B(b)(2)(J) of the Act permit the MSRB, by rule, to require the payment of fees in connection with arbitration proceedings. Any fees required by the MSRB to be paid in connection with arbitration must be filed with the Commission, pursuant to Section 19 of the Act.

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The Commission has determined that the MSRB's arbitration procedures, which are similar to many of those employed by other self-regulatory organizations, are appropriate. Nevertheless, the Commission and its staff currently are examining the questions raised by the use of customer agreements which require the submission of all future claims to binding arbitration. As a result of this examination of customer arbitration agreements, the Commission may recommend or require that the MSRB consider modifications of, or additions to, the rules here approved.



MSRB that degree of involvement in those activities.

It appears that the proposed rule change will provide a means for resolving disputes on an expedited and relatively inexpensive basis, thereby enhancing investor protection. Although several persons commenting on a draft of the arbitration code argued that a dollar ceiling should be imposed on municipal securities disputes which must be submitted to arbitration, the MSRB did not alter the proposed code to impose such a limit. The MSRB stated its belief that the adoption of such a limitation would be inconsistent with its goal of establishing an arbitration code which provides a means for resolving municipal securities disputes on an expedited and relatively inexpensive basis. In addition, the MSRB expressed the view that the formal procedures provided in the proposed code would promote a full and fair resolution of municipal securities disputes, regardless of the dollar amount involved.

The Commission finds that the amended proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B of the Act and the rules and regulations under that section. The Commission also finds that it has good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing of the most recent amendment to the proposal, because of the importance of establishing uniform arbitration procedures for the municipal securities industry. The Commission notes that, with the exception of the last amendment, there has been substantial opportunity for public comment on the proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned amended proposed rule change be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS  
Secretary.

[FR Doc. 78-36086 Filed 12-27-78; 8:45 am]

[8010-01-M]

[Release 34-15396; File No. SR-NASD-78-17]

#### NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

(Self-Regulatory Organizations; Proposed Rule Change)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) notice is

hereby given on November 15, 1978 the National Association of Securities Dealers, Inc. (the "NASD" or "Association") filed with the Securities and Exchange Commission a proposed rule change as follows:

#### *The NASD's Statement of the Terms of Substance of the Proposed Rule Change*

##### TEXT OF PROPOSED RULE CHANGE

The following is the full text of the proposed amendments which relate to the fidelity bonding requirements for members contained in Appendix C to Article III, Section 32 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("Association"). New language is italicized, deleted language is bracketed and unchanged paragraphs are indicated by asterisks:

#### RULES OF FAIR PRACTICE

##### ARTICLE III

##### SECTION 32

##### FIDELITY BONDS

##### APPENDIX C

##### Annual Review of Coverage

(c) [Each member shall initially determine minimum required coverage of the bond pursuant to subsections (a)(2), (3), (4) and (5) herein, by reference to the highest required net capital during the twelve month period immediately preceding issuance of the bond. Thereafter.]

(1) [Each member, other than members covered by subsection (c)(2) herein, shall annually review, as of the anniversary date of the issuance of the bond, the adequacy thereof by reference to the highest required net capital during the immediately preceding twelve month period, which amount shall be used to determine minimum required coverage for the succeeding twelve month period pursuant to subsections (a)(2), (3), (4) and (5) herein.]

(2) Each member which has been in business for one year shall, as of the first anniversary date of the issuance of its original bond, review the adequacy thereof by reference to an amount calculated by dividing the highest aggregate indebtedness it experienced during its first year by 15. Such amount shall be used in lieu of required net capital under Rule 15c3-1 in determining the minimum required coverage to be carried in the member's second year pursuant to subsections (a)(2), (3), (4) and (5) herein. Notwithstanding the above, no such member shall carry less minimum bonding coverage in its second year than it carried in its first year.

(3) Each member shall make required adjustments not more than [thirty] sixty days after the anniversary date of the issuance of such bond.

#### THE NASD'S STATEMENT ON THE PURPOSE OF PROPOSED RULE CHANGE

Paragraph (c) of Appendix C requires a member to review its bonding coverage annually and to adjust its bond amount to at least 120% of its highest required net capital during the preceding twelve month period. When Section 32 was adopted members were required to maintain minimum net capital of \$5,000 and aggregate indebtedness was not permitted to exceed net capital by a ratio of more than 20/1. When the net capital rule was amended in 1975 it contained provisions requiring an increase in minimum net capital for certain broker/dealers to \$25,000 and also required broker/dealers to maintain a ratio of aggregate indebtedness to net capital of not more than 8/1 in the first year in business and 15/1 in subsequent years.

This meant that the Section 32 bonding requirement during the second year for members who had only been in business for one year would now be computed at 120% of an 8/1 ratio rather than a 15/1 ratio. Thus, the bonding coverage required to be carried by a member in its second year would be higher than that originally intended when the rule was adopted. In fact, the bonding requirement for such second year members would be approximately twice as high as the bond required to be carried by members in similar circumstances in their third and subsequent years in business.

To illustrate, assume a member commences business with a required minimum net capital of \$25,000. The minimum fidelity bond it would be required to carry in its first year would be \$30,000 (120% x \$25,000). Assume that its highest aggregate indebtedness during its first year was \$1,200,000. At that point in time it would have been required to maintain minimum net capital of \$150,000 (\$1,200,000 ÷ 8). At the end of the year when it reviews the adequacy of its bonding coverage it would be required to increase the coverage to \$180,000 (120% x \$150,000). A member in similar circumstances in its third and subsequent years would use the 15/1 ratio and the minimum bond amount would be \$96,000 (\$1,200,000 ÷ 15 x 120%).

Under the Annual Review provisions of the present rule, a member has 30 days from the anniversary date of its fidelity bond in which to make required modifications to its bonding coverage. Under the proposed amend-

ment, this period would be extended to 60 days in order to ameliorate the difficulty members are experiencing locating an insurer willing to cover an increase in the firm's bonding requirements. Members are also discovering that even where their insurance carriers are willing to continue coverage, the premiums on renewal are being increased substantially. Therefore, members need more time to locate a new insurance carrier and/or explore the available market so that they will not be forced to accept an uncompetitive and economically burdensome premium.

Specifically, the proposed amendments accomplish the following:

(1) The first sentence to present paragraph (c) is deleted because it was pertinent only during the initial implementation of Section 32 in 1974;

(2) New paragraph (c)(1) describes the basic procedure which must be used by each member which has been in business longer than one year in determining the minimum amount of fidelity bonding coverage it must carry for a succeeding year when it performs its annual review on each anniversary date of the issuance of its bond;

(3) New paragraph (c)(2) allows a member which has been in business for one year, when it performs its first annual review, to use a 15/1 rather than an 8/1 ratio of the highest aggregate indebtedness it experienced during its first year when calculating the minimum bonding coverage it must carry in its second year; and

(4) The last sentence of present paragraph (c) is retained but renumbered as subparagraph (3) and the time allotted for a member to complete its annual bonding adjustment is increased from 30 to 60 days.

#### THE NASD'S STATEMENT ON THE BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A(g)(3)(A) provides: "A registered securities association may . . . condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility . . . as are prescribed by the rules of the association . . ." Section 15A(b)(6) of the Act requires that "[t]he rules of the association [be] designed . . . to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market . . . and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between . . . brokers, or dealers . . ." These provisions provide the Association with authority to enact non-discriminatory financial responsibility requirements for its members in order to protect investors and

the public interest and complement Section 15(c)(3) of the Act which requires brokers or dealers to comply with "such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers . . ." The proposed amendments are designed to facilitate the financial responsibility of members by insuring them against losses caused by employee dishonesty and thereby protect the investment public, while at the same time eliminating certain discriminatory and other unfair aspects of the present rule which makes it more difficult for small broker-dealers to compete fairly in the open market. Accordingly, the proposed amendments, if approved by the Commission, will be consistent with the requirements of the Act.

#### THE NASD'S STATEMENT ON COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON THE PROPOSED RULE CHANGE

Comments from members were solicited in Notices to Members 78-2 and 78-15. Fifteen comment letters were received, ten of which favored the proposed amendments, two were opposed and three were nonresponsive. It should be noted that most of these comments are not specifically directed to the proposed amendments which are the subject of this filing but are instead directed to proposed amendments included in SR-NASD-78-10, which is currently undergoing Commission review.

#### THE NASD'S STATEMENT ON BURDEN ON COMPETITION

The proposed rule changes impose no burdens on competition not necessary in the furtherance of the purposes of the Act. Indeed, the effect of the proposed rule changes will be to reduce unnecessary burdens on competition by facilitating the ability of smaller broker-dealers to obtain adequate bonding insurance at a reasonable price.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six (6) copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing, including Notices to Members 78-2 and 78-15, copies of all comment letters received in response thereto and a summary thereof, and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 15 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

DECEMBER 15, 1978.

[FR Doc. 78-36094 Filed 12-27-78; 8:45 am]

[8010-01-M]

[Rel. No. 16528; 812-4572]

#### NEW JERSEY TAX-EXEMPT INCOME TRUST

DECEMBER 14, 1978.

Notice of filing of application pursuant to section 6(c) of the Act for an order of exemption from sections 14(a) and 19(b) of the act and rules 19b-1 and 22c-1 thereunder.

Notice is hereby given that New Jersey Tax-Exempt Trust, Series I (and Issues Supplemental Thereto) ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), and its sponsor, John J. Rayn & Co., Inc. ("Sponsor") (Sponsor and Fund collectively referred to as "Applicants"), 80 Main Street West Orange, New Jersey 07052, filed an application on October 10, 1978, and amendments thereto on November 13, 1978 and December 11, 1978, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Fund from compliance with the initial net worth requirement of Section 14(a) of the Act, exempting frequency of capital gains distributions of the Fund from the provisions of Section 19(b) of the Act and Rule 19b-1 thereunder, and exempting the secondary market operations of the Sponsor from the provisions of Rule 22c-1. All interested persons are referred to the application on file with the Commission for a statement of the



representations contained therein, which are summarized below.

Each series of the Fund ("Series") will be organized under the laws of the State of New York and will be governed by a trust indenture and agreement ("Agreement") under which the Sponsor will act as depositor, Bradford Trust Company will act as trustee ("Trustee"), and Standard and Poor's Corporation will act as evaluator ("Evaluator"). Each Agreement will contain standard terms and conditions of trust common to all Series of the Fund. Pursuant to each Agreement the Sponsor will deposit with the Trustee not less than \$5,000,000 principal amount of long-term, interest-bearing, tax-exempt obligations including contracts for the purchase thereof ("Bonds"). Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for not less than 5,000 units of undivided interest in each Series of the Fund ("Units"), which will represent the entire ownership of each Series of the Fund at the date of deposit.

The application states that a minimum of 85% of the aggregate principal amount of all of the Bonds will be interest-bearing obligations issued by or on behalf of the State of New Jersey, its political or governmental agencies or instrumentalities, the interest income on which, in the opinion of counsel to the issuers of such obligations or by ruling of the Internal Revenue Service, is exempt from Federal income taxes and which in the opinion of counsel to the issuers of such obligations is exempt from income taxation by the state of New Jersey, its subdivisions and municipalities. The balance of the Bonds will be interest-bearing obligations issued by or on behalf of states, counties, municipalities and territorial possessions of the United States, authorities, agencies and other subdivisions thereof, the interest of which is exempt from Federal income taxes (and in some cases New Jersey income taxes), in the opinion of counsel to the issuers of such obligations or by ruling of the Internal Revenue Service.

Sponsor is accumulating Bonds for the purpose of deposits for Series I and will follow a similar procedure of accumulating the bonds for each future Series. In selecting Bonds the following factors are considered: (i) minimum Standard & Poor's Corporation rating of "BBB" or minimum Moody's Investors Service, Inc.'s rating of "Baa"; provided, if they have, in the opinion of the Sponsor, credit characteristics sufficiently similar to the credit characteristics of outstanding interest-bearing Tax-exempt obligations that are so rated as to be acceptable for acquisition by each

Series, provided that the aggregate amount of such portion of the Bonds does not exceed thirty percent (30%) of the aggregate principal amount of Bonds, and not more than ten percent (10%) of the aggregate principal amount of Bonds in each Series to be obligations of a single issuer in the case of general obligations secured by the power of the issuer to levy ad valorem taxes for the payment thereof or a single guarantor in the case of revenue bonds payable solely from revenues derived by the issuer thereof from specific projects; (ii) reasonable value relative to other issues of similar quality and maturity; (iii) diversification of the portfolio as to purpose of issue and location of issuer and (iv) income to certificateholders of a Series in the Fund.

Applicants represent that the portfolio of each Series will consist of the Bonds, together with accrued and undistributed interest and undistributed cash realized from the sale, redemption, maturity or other disposition of the Bonds. Certain of the Bonds may time to time be redeemed or will mature in accordance with their terms. Sponsor may, under the agreement, direct Trustees to sell or liquidate any of the Bonds only under the happening of the following events: (i) default in the payment of principal or interest; (ii) institution of legal proceedings involving such Bonds; (iii) a breach of covenant or warranty which could adversely affect the payment of debt service on the Bonds; (iv) default in payment of principal or interest on any other outstanding obligations of the same issuer; (v) in the case of revenue bonds, if the revenues based upon official reports fall substantially below the estimated revenues calculated to be necessary to pay principal and interest; (vi) a decline in market price to such an extent, or such other credit or market factors exist, as, in the opinion of the Sponsor, would make retention of such bonds detrimental to a Series of the Fund; and (vii) in the event any of the bonds are subject of an advance refunding. The proceeds from the maturity, sale, redemption or other disposition of Bonds will not be reinvested but will be distributed to Unitholders. The Sponsor may instruct the Trustee to accept or reject an offer by an issuer of Bonds to issue new obligations in exchange or substitution for any of the Bonds if the issuer is in default on such Bonds or, in the written opinion of the Sponsor, the issuer will probably default on such Bonds in the reasonably foreseeable future. The Trustee is also empowered to sell Bonds in order to provide funds for the redemption of Units of a Series and to the extent the proceeds of such sales are in excess of the amount required for redemption, such excess

proceeds will be distributed to Unitholders. The Trustee will also distribute to Unitholders moneys held in a Series of the Fund to cover contracts, duly assigned to the Trustee, to purchase Bonds not yet delivered on the date of deposit of a Series if the Sponsor shall notify the Trustee that such contracts have failed. Except as noted in this paragraph with respect to certain exchanges, the application states that the Agreement prohibits the substitution of securities in the portfolio for the securities initially deposited.

The application states that while not obligated to do so, it is the Sponsor's present intention to maintain a market for the Units of each Series of the New Jersey Tax-Exempt Income Trust, and to continually offer to purchase such at prices subject to change at any time, based on the aggregate of the then current offering prices of the Bonds in a Series of the Fund as computed by the Evaluator. If the supply of United exceeds demand, or for other business reasons, the Sponsor may discontinue purchases of Units at prices based on the offering prices of the Bonds. In such event the Sponsor may nonetheless purchase Units, as a service to Unitholder, at a price based on the then current redemption value of those Units.

If the Sponsor repurchases Units in the secondary market at a low price below the offering side evaluation of the Bonds, it will not resell such Units in the secondary market, but will either hold such Units for its own account or redeem such Units with the Trustee.

#### RULE 22C-1

Rule 22c-1, adopted pursuant to Section 22(c) of the Act, provides, in pertinent part, that redeemable securities of registered investment companies must be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicants represent that the Sponsor intends to maintain a secondary market for Units at the offering side evaluation used for redemption of Units. For purposes of secondary market transactions, pricing of Units would be based upon evaluations made only once each week, and the basis for Sponsor's determination of its repurchase bid or offering price is the evaluation made by the Evaluator of as the close of business on the last business day of each week effective for all pur-

chases and sales made by the Sponsor during the following week.

Applicants assert that the public Unitholders will benefit from such pricing procedure by receiving a normally higher repurchase price for their Units without the cost burden of daily evaluations of the Unit redemption value. In addition, the Sponsor has undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide estimated evaluations of trading days. On any such day when the Evaluator feels that in its independent judgment it cannot state that the bid side evaluation is not higher than or equal to the previous Friday's offering side evaluation, the Sponsor will order a new offering side evaluation for purposes of repurchase. In addition, Applicants state that the Evaluator has indicated that it can, without a formal evaluation, determine if the evaluation has decreased by an amount greater than or equal to one half a point from the previous Friday evaluation. Applicants state that the Sponsor has agreed that, in the case of the resale of Units in the secondary market, if the Evaluator cannot state that the previous Friday's price is no more than \$5.00 (on a Unit representing approximately \$1,000 face amount of underlying bonds) greater than the current offering price, a full evaluation will be ordered.

#### SECTION 14(A)

Section 14(a) of the Act requires, in substance, that a registered investment company (a) have a net worth of at least \$100,000 prior to making a public offering of its securities, (b) have previously made a public offering and at that time have had a net worth of \$100,000 or (c) have made arrangements for at least \$100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions and that arrangement will be made whereby any amount so paid in, as well as any sales load, will be refunded to any subscriber on demand in the event the net proceeds so received by the company do not result in the company's having a net worth of at least \$100,000 within 90 days after such registration statement becomes effective.

Applicants represent that Series I and each subsequent Series at the date of deposit of the underlying bonds for such Series and before any Unit of that Series is offered to the public, will have a net worth of not less than approximately \$5,000,000, represented by the market value of the Bonds on such date. Further, the Sponsor has agreed to refund on demand without deduction, all sales charges to purchasers of Units of a Series if, within ninety days from the time the Series becomes effective under the Securities

Act of 1933, the net worth of the Series shall be reduced to less than \$100,000 or if the Series shall have been terminated. The Sponsor states that it has an agreement with the Trustee that on that days of deposit of each Series that in the event that redemption by the Sponsor of Units constituting a part of the unsold units shall result in the Series having a net worth of less than twenty percent (20%) of the principal amount of Bonds originally deposited in the Series, the Trustee shall terminate the Series in the manner provided in the Agreement and distribute the proceeds of the sale of all Bonds or other assets deposited with the Trustee to Unitholders as provided therein. The Sponsor further agrees, in such event, to refund any sales charge to any purchaser of Units purchased from the Sponsor on demand and without deduction.

#### RULE 19B-1

Rule 19b-1(a), adopted pursuant to Section 19(b) of the Act, provides in substance that no registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code shall distribute more than one capital gain distribution in any one taxable year. Paragraph (b) of the Rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain distributions received from a "regulated investment company" within a reasonable time after receipt.

Applicants state that under the terms of the Agreement, Unitholders are to receive their distributions, both as to principal and interest, no later than one month after receipt thereof by the Fund, and there exists no power to vary this procedure under the Agreement. The Fund may receive amounts constituting capital gains in the hands of Unitholders resulting from the sale of Bonds to cover Units submitted for redemption at any time during the year, or from the sale of Bonds in the limited events outlined in the application. In order to strictly comply with the requirements of Rule 19b-1, the Trustee would be forced to hold all such amounts until the end of its taxable year in order to ensure against a prohibited capital gain distribution, which Applicants contend would be to the detriment of Unitholders.

In support of the requested exemption, the application states that the dangers against which Rule 19b-1 is intended to guard do not exist in the situation at hand because the Fund and its Sponsor have substantially no control over events which might trigger capital gains. In addition, it is al-

leged that the amounts involved in a normal distribution of principal are relatively small in comparison to the normal interest distribution, and such distributions are clearly indicated in accompanying reports to Unitholders as return of principal.

Paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. Applicants assert that the possible purpose behind such provision is to avoid forcing a unit investment trust to accumulate valid distributions received throughout the year and distribute them only at year end and that the operations of the Fund will be consistent with the apparently intended objectives of such provision.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 8, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders in this matter, including the date of the hearing (if ordered) and any postponements thereof.



For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 78-36087 Filed 12-27-78; 8:45 am]

[8010-01-M]

[Release No. 15410; SR-NYSE-78-21]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

DECEMBER 13, 1978.

On March 29, 1978, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend the NYSE Constitution and Rules by rescinding NYSE Article XIV and Rule 345(c), adding a new Article XIV and Rules 476 and 477 and amending Articles III, X, and XI. The proposed rule change is intended to conform the NYSE's disciplinary rules to the provisions of the Act, to organize those rules into a uniform body of enforcement regulations and to clarify certain procedural requirements with respect to these disciplinary rules.

Notice of the proposed rule change, together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 14755, May 12 1978) and by publication in the FEDERAL REGISTER (43 FR 23065, May 30, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered, and were made available to the public at the Commission's Public Reference Room.

The Commission received comment on this rule filing from the Association of Investment Brokers ("AIB")<sup>1</sup> and from 41 other interested persons, who appear to be registered representatives of NYSE member firms.<sup>2</sup> The NYSE filed a response to the AIB letter.<sup>3</sup>

The NYSE proposal, in pertinent part, involves the following procedures. NYSE disciplinary hearings are held before a Hearing Panel consisting of at least three persons; a Hearing Officer, who is Chairman of the Panel,

and normally two other panelists who are chosen from a pool of eligible persons who are members of the Hearing Board.<sup>4</sup> Hearing Officers and Hearing Board members are appointed annually and serve at the pleasure of the NYSE Board of Directors.

If the person subject to a disciplinary proceeding is a member, member organization, allied member, or approved person of the NYSE, the members of the Hearing Board serving on the Panel must also be members or allied members.<sup>5</sup> If the person is a registered or non-registered employee of a member or member organization and the person is not a member or allied member of the NYSE, the members of the Hearing Board serving on the Panel must be registered employees or non-registered employees of members and member organizations who are not members or allied members. If there are joint respondents from each of these two categories, at least one of the persons serving on the Panel must be a member or allied member and at least one other person serving on the Panel must be a registered or non-registered employee of a member or member organization who is not a member or allied member.<sup>6</sup>

A portion of proposed NYSE Rule 476(b) would alter the current composition of Hearing Panels by providing that if the charge brought by the NYSE related to floor activities, at least one of the persons on the Hear-

<sup>1</sup>Proposed NYSE rule 476(b). The Chairman of the NYSE Board of Directors, subject to the approval of the Board, designates from among the officers and employees of the NYSE a Chief Hearing Officer and one or more alternate Hearing Officers who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters. An alternate Hearing Officer would preside in a proceeding in which the Chief Hearing Officer had a conflict of interest or was unavailable. The Chairman of the NYSE Board also appoints the Hearing Board from which the other panelists are chosen, which is composed of members and allied members of the NYSE who are not members of the Board of Directors, as well as registered employees and non-registered employees of members and member organizations. The Hearing Board is composed of as many members as the Chairman deems necessary.

<sup>2</sup>Article I, Section 3(g) of the NYSE Constitution defines an "approved person" as a party who is not an employee, a member or an allied member of a member corporation and who is a director of a member corporation, or who beneficially owns 5% or more of the outstanding voting stock of a member corporation. The NYSE staff stated that approved persons are not included on the Panel because they are not usually associated with the securities business, but rather are outside directors or investors. The NYSE believes approved persons generally would not have the securities industry expertise it believes is necessary for panelists hearing a disciplinary matter.

<sup>3</sup>Proposed NYSE Rule 476(b).

ing Panel must be active on the floor. Similarly, charges relating to non-floor activities would require at least one "upstairs" person on the panel.

Procedures for the determination of evidentiary and procedural matters have been incorporated into proposed Rule 476(c). The Hearing Officer would resolve all procedural and evidentiary matters, and could require the Exchange to permit the respondent to inspect and copy documents or records in the possession of the Exchange which are material to the preparation of a defense or are intended for the use as evidence at the hearing by the Division or Department of the Exchange initiating the proceeding. The NYSE also proposes to incorporate in Rule 476(e) the NYSE's existing practice of making a written record of all disciplinary proceedings.

Determinations that a respondent has violated the Act, the rules thereunder or NYSE rules require a vote of a majority of the Hearing Panel. The Hearing Panel's determination is final and conclusive, unless the respondent files a request to the Board of Directors for review.<sup>7</sup> The Hearing Panel may impose one or more of the following disciplinary sanctions upon a finding of violation: expulsion or suspension from membership; limitation as to activities, functions, or operations, including, in the case of a specialist or Registered Competitive Market Maker, the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; or any other fitting sanction.<sup>8</sup> The NYSE proposes to increase the maximum allowable fine for natural persons from \$5,000 per violation (with a \$25,000 ceiling for each disciplinary action regardless of the number of violations, \$100,000 for member organizations) to \$25,000 for each charge (\$100,000 for member organizations), with no limit per disciplinary action.

The Commission has considered the basis and purpose of the proposed rule changes set forth by the NYSE in its rule filing, the issues raised by the commentators, and the NYSE's response to those comments, and has concluded that the rule filing is consistent with the requirements of the Act. Section 6(b)(7) of the Act<sup>9</sup> together with the due process requirements of Section 6(d),<sup>10</sup> which were added by

<sup>7</sup>Id.

<sup>8</sup>Proposed NYSE Rule 476(a).

<sup>9</sup>Section 6(b)(7) of the Act directs exchanges to provide in their rules a fair procedure for the disciplining of members and persons associated with members.

<sup>10</sup>Section 6(d) of the Act provides that in any exchange disciplinary proceeding the exchange shall—"bring specific charges, notify such member or person of, and give

Footnotes continued on next page

the Securities Acts Amendments of 1975,<sup>11</sup> impose on exchanges the same duty to provide fair procedures for disciplining members and associated persons to which registered national securities associations have been subject since 1938.<sup>12</sup> The Commission believes that the NYSE's proposed rule changes meet those requirements.

The AIB comments on the NYSE proposal relate to the composition and selection of Hearing Panels which hear and decide NYSE disciplinary actions and to the fairness of the NYSE's disciplinary proceedings. The AIB contends that registered representatives will not receive a "peer" review in NYSE disciplinary proceedings (i.e., review by Hearing Panelists who are active retail investment brokers) since the pool of registered representatives from which the NYSE selects its Hearing Panels consists for the most part of office, supervisory and branch managers whose registered representative status is incidental to their other duties. The AIB maintains that proceedings involving registered representatives should be heard by full time registered retail investment brokers and suggests that they be named by the AIB. The AIB also contends that: the NYSE Hearing Officer should be legally trained; the Hearing Panel should contain 6 persons with a 4/3 majority required for a finding of violation; respondents should be permitted to *voir dire* the panel; the evidentiary standard of "beyond a reasonable doubt" should prevail; and the maximum allowable fine should not be increased.

Neither the Act nor its legislative history suggest that the "peer review" sought by the AIB is required to be provided in disciplinary actions conducted by self-regulatory organizations. Further, the Commission does not believe that such "peer review" is a necessary element of fair exchange disciplinary procedures within the meaning of Section 6(b)(7) of the Act. In the Commission's view, the NYSE rules, by providing for a Hearing Panel to be selected from a Hearing Board composed of persons who work in retail brokerage firms, many of whom are registered representatives,<sup>13</sup> pro-

Footnotes continued from last page  
him an opportunity to defend against, such charges, and keep a record."

<sup>11</sup>Pub. L. No. 94-29 (June 4, 1975).

<sup>12</sup>Senate Committee on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 96 (1975).

<sup>13</sup>According to the NYSE breakdown of the current members of the Hearing Board from which panelists would be chosen for a disciplinary proceeding involving a registered representative, 79 are registered representatives and 32 are non-registered employees of member organizations. Of the 79 registered representatives, 60 are engaged solely in the handling of customer accounts.

vide an adequate framework for assuring fair and impartial disciplinary hearings before persons with the objectivity, experience and ability to understand the issues presented. Moreover, while the NYSE has endeavored to provide a measure of peer review for all persons subject to its disciplinary jurisdiction, the Commission finds that the type of peer review afforded to registered representatives in comparison to the type of peer review afforded to other categories of persons is consistent with the requirement under Section 6(b)(5) of the Act that the rules of an exchange not be designed "to permit unfair discrimination between customers, issuers, brokers, or dealers."<sup>14</sup>

The Commission also believes that the NYSE's proposed rules insure the basic fairness of the actual proceedings.<sup>15</sup> The Commission believes the Act permits an exchange the flexibility to choose its Hearing Officers as it deems appropriate, without a requirement that they be legally trained, so long as the Hearing Officer is capable of conducting the proceeding in a fair manner. Exchange disciplinary proceedings are less formal than judicial proceedings and do not require as sophisticated knowledge of the technical aspects of trial practice as might be expected in a judicial proceeding. The Commission believes that the NYSE's selection of Hearing Officers who have no duties or functions relating to the investigation or preparation of charges is an adequate means of preventing any conflict of interest, or appearance thereof, by the Hearing Officer. Further, as a means of assuring the impartiality of Hearing Panel members

The NYSE advised the Commission that it continually updates and adds to the Hearing Boards from which panelists are chosen, and it will make an effort to increase the representation of registered representatives in that pool from which panelists are chosen to hear a case involving a registered representative respondent. The Commission expects that the NYSE will make every effort to administer its rules to assure that registered representatives are fairly represented on Hearing Panels.

<sup>14</sup>The AIB notes that cases involving activities on the NYSE floor would be heard by a panel which would include at least one person active on the floor. The possibility exists, however, that the floor person may be involved in floor activities different from those of the respondent. For example, the floor representative on a disciplinary panel considering rule violations by a specialist might well be a floor broker or a Registered Competitive Market Maker, and not necessarily another specialist.

<sup>15</sup>Further, the Commission, in its review of self-regulatory organization disciplinary proceedings, is required to insist upon meticulous compliance by the self-regulatory organization to that organization's procedural rules. See *Todd and Company, Inc. v. Securities and Exchange Commission*, 557 F.2d 1008 (3d Cir. 1977).

in each case, the NYSE provides that prospective panelists be given the names of parties, firms, attorneys and a summary of the charges, and be asked to identify any potential conflict of interest. The Commission believes this procedure offers sufficient opportunity to replace any panelist whose decision might be tainted by an appearance of a conflict of interest.

The Commission believes that the NYSE system of three person panels with a two-thirds majority for a finding of violation is reasonable and is consistent with the provisions of the Act in providing a fair procedure for disciplinary proceedings. Further, the Commission believes that self-regulatory organizations should be permitted reasonable latitude in selecting the size of the hearing panels used to conduct their disciplinary proceedings and the vote required for a finding of violation.

With respect to the evidentiary standard applied in NYSE disciplinary proceedings, given the remedial nature of those proceedings, the Commission does not believe that the Act requires the application of a standard requiring that proof of violation be established beyond a reasonable doubt.

Finally, the Commission believes the NYSE's ability to impose a more substantial sanction in appropriate cases will enhance the NYSE's ability to enforce compliance with the Act, the rules thereunder and exchange rules, and is within the NYSE's province as a self-regulatory organization. The increase of the maximum fine should not be subject to abuse or arbitrariness since NYSE disciplinary actions are subject to review by the Commission.<sup>16</sup>

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to registered national securities exchanges and, in particular, the requirements of Sections 6(b)(5), 6(b)(6), 6(b)(7), 6(d), and 19(d), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 78-36088 Filed 12-27-78; 8:45 am]

<sup>16</sup>The Commission notes that final disciplinary actions of exchanges are subject to review by the Commission under Sections 19(d) and (e) of the Act, thereby assuring NYSE members a safeguard against any possible abuses which in practice might result under the NYSE rules.



## [8010-01-M]

(Rel. No. 20827; 70-6234)

## PENNSYLVANIA ELECTRIC CO.

DECEMBER 13, 1978.

Notice of proposed sale of transmission line by subsidiary to an unaffiliated electric utility

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric utility subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Act of 1935 ("Act") designating Section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Penelec is the owner of a 115 kv single circuit electric transmission line of approximately 15 miles in length connecting Penelec's Lenox substation in Susquehanna County, Pennsylvania with the Peckville substation owned by Pennsylvania Power and Light Company ("PP&L"), an electric utility not affiliated with Penelec or GPU, located in Lackawanna County, Pennsylvania (the "L/P Line").

Penelec is the owner of a 230 kv single circuit electric transmission line of approximately 55 miles in length connecting Penelec's East Towanda Substation in Bradford County, Pennsylvania with PP&L's Peckville Substation in Lackawanna County, Pennsylvania. Approximately 2.3 miles of the East Towanda-Peckville Line connects the PP&L Peckville Substation with the Southern leg of the loop of the East Towanda-Peckville Line into the Lackawanna Switching Station (the "Lackawanna Line").

The L/P Line is no longer useful to Penelec as a result of the development by Penelec of the parallel 230 kv system represented by the East Towanda-Peckville Line. The Lackawanna Line is no longer useful to Penelec as a result of the construction of the Lackawanna Switching Station.

Therefore Penelec proposes to sell to PP&L the following property:

(1) The facilities and equipment constituting the L/P Line, certain of Penelec's property presently located in PP&L's Peckville substation and the appurtenant right of way.

(2) The facilities and equipment constituting the Lackawanna Line and the appurtenant right of way.

The purchase price of the property and the equipment will be the original book cost, less depreciation, computed at the closing date. The estimated

price as of June 30, 1978, would be \$353,561.31.

The fees and expenses to be incurred in connection with the proposed transaction is approximately \$17,500 including \$15,000 in attorney's fees. It is stated that the Pennsylvania Public Utility Commission has jurisdiction with respect to the proposed transaction, and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 5, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36089 Filed 12-27-78; 8:45 am)

## [8010-01-M]

## PHILADELPHIA STOCK EXCHANGE, INC. et al.

Applications for Unlisted Trading Privileges  
and of Opportunity for Hearing

DECEMBER 14, 1978.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and regis-

tered on one or more other national securities exchanges:

American Sterilizer Company—File No. 7-5035—Common Stock, \$83½ Par Value.  
United Energy Resources, Inc.—File No. 7-5036—Common Stock, \$1 Par Value.  
Buttes Gas & Oil Company (DE)—File No. 7-5051—Common Stock, \$1.10 Par Value.  
Allegheny Ludlum Industries, Inc.—File No. 7-5052—\$2.19 Cumulative Preference Stock, No Par Value.  
First Pennsylvania Corporation—File No. 7-5053—Warrants (Expiring May 4, 1983).  
J. Ray McDermott Company, Inc.—File No. 7-5055—Series A, \$2.20 Cumulative Convertible Preferred Stock, \$1 Par Value.  
J. Ray McDermott Company, Inc.—File No. 7-5055—Series B, \$2.60 Cumulative Convertible Preferred Stock, \$1 Par Value.  
Greyhound Corporation (Arizona)—File No. 7-5057—Common Stock, \$1.50 Par Value.  
Greyhound Corporation (Arizona)—File No. 7-5058—Warrants (Expiring May 14, 1980).  
Pepper (Dr.) Company—File No. 7-5059—Common Stock, No Par Value.  
Humana Inc.—File No. 7-5063—\$2.50 Cumulative Preferred Stock, \$1 Par Value.  
Carrier Corporation—File No. 7-5064—\$1.86 Series Cumulative Convertible Preferred Stock, No Par Value.

Upon receipt of a request, on or before January 14, 1979, from any interested person, the Commission will determine whether the applications with respect to the companies named shall be set down for hearing. Any such request should include a brief statement as to the title of the security in which the person is interested, the nature of his interest in making the request, and the position which he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36090 Filed 12-27-78; 8:45 am)

## [8010-01-M]

(File No. 500-11)

## SOURCE INVESTMENT, INC.

## Suspension of Trading

DECEMBER 15, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Source Investment, Inc. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:45 a.m. on December 15, 1978 through December 24, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

(FR Doc. 78-36091 Filed 12-27-78; 8:45 am)

## [8010-01-M]

(Rel. No. 20835; 70-62471)

## VERMONT YANKEE NUCLEAR POWER CORP.

Proposed Amendment of First Mortgage  
Indenture

DECEMBER 18, 1978.

Notice is hereby given that Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), 77 Grove Street, Rutland, Vermont 05701, an indirect electric utility subsidiary of both New England Electric System and Northeast Utilities, registered holding companies, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Vermont Yankee proposes to amend its first mortgage indenture ("Indenture") dated as of October 1, 1970, as heretofore amended and supplemented by supplemental indentures dated as of March 1, 1971, October 1, 1971, July 13, 1972, August 1, 1972, and January 15, 1973, between it and Chemical Bank, successor Trustee, which Indenture secures its first mortgage bonds ("Bonds") of the following series and amounts: \$80,000,000 Series A, 9%, due 1998; \$15,000,000 Series B, 8½%, due 1998; and \$20,000,000 Series C, 7.70% due 1998.

The proposed amendment would modify Section 6.17 of the Indenture,

which section presently restricts the types of business activities in which declarant may engage, so as to permit Vermont Yankee to engage in a wider variety of uranium procurement activities. Such modified section would read as follows (the underlined words being the added language):

Section 6.17: *Limitation on Business of the Company.* The Company will not engage in any business other than constructing, owning and operating the Unit (including additions and improvements thereto), the sale of electricity generated by the Unit to one or more of the Utility Companies, the sale of by-product materials and services from the operation of the Unit, participating in ventures to acquire mineral interests, to explore for natural uranium, to mine and process natural uranium to produce fuel which can be utilized in nuclear electric generating facilities, or to deal in uranium thus acquired in all such stages of processing, and, in connection with and incidental to the operation of the Unit (and additions and improvements thereto), the conduct of research into and the development of processes for the generation of electricity from nuclear or atomic energy or from steam or other energy produced as a result of nuclear or atomic fission. The Company will not have any 'subsidiary company' as defined in Section (2)(a)(8)(A) of the Public Utility Holding Company Act of 1935.

It is stated that the purpose of the proposed amendment is to provide declarant with greater flexibility in selecting its fuel procurement methods. Vermont Yankee operates a 540 MW nuclear-powered generating plant which has been in service since November 30, 1972, and requires approximately 260,000 pounds of uranium (U<sub>3</sub>O<sub>8</sub>) annually. The plant's U<sub>3</sub>O<sub>8</sub> needs have been contracted for through 1981, and declarant has a long-term contract to purchase U<sub>3</sub>O<sub>8</sub> to be extracted from phosphoric acid which will provide about 20% of its anticipated needs after 1981. The market for uranium to fuel commercial nuclear reactors has undergone dramatic changes in recent years. The price has substantially increased since 1973, and this trend is expected to continue into the foreseeable future, although at a slower rate. Declarant states that entering the uranium supply field in order to assure a future supply of uranium and to reduce its ultimate cost exposure merits serious consideration and may constitute a more efficient and less expensive way to assure an adequate uranium supply. The methods of entering the uranium supply field include joint ventures with other established companies to finance the expansion of existing mines, develop known reserves or explore for new de-

posits as well as the formation of new entities, either alone or with other reactor owners, to explore for, develop and mine uranium deposits.

The proposed Indenture amendment requires the consent of the holders of 66⅔% in aggregate principal amount of the Bonds outstanding (as of November 1, 1978, there were \$89,877,000 aggregate principal amount of Bonds outstanding, so the amendment would require the consent of the holders of \$59,921,000 aggregate principal amount). Declarant proposes to solicit the consent of Bondholders by mailing to each a letter, solicitation statement and consent, which mailing will be followed by oral solicitation of certain Bondholders and brokers by officers or other regular employees of Vermont Yankee.

Any entry by declarant into the uranium supply field is subject to the authorization of this Commission, which authorization is not being sought at the present time.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 11, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, and the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.



For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 78-36092 Filed 12-27-78; 8:45 am]

#### [4910-14-M]

#### DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-1821]

#### CHEMICAL TRANSPORTATION ADVISORY COMMITTEE

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Chemical Transportation Advisory Committee's Subcommittee on Commercial Explosives to be held on January 17, 1979, beginning at 9:30 in Room 8238, Nassif Building, 400 7th Street, SW, Washington, D.C. 20590.

The purpose of this meeting is to consider suggestions for regulation of waterfront facilities handling explosives. The agenda for this meeting is as follows:

1. Call to Order.
2. Opening Remarks.
3. Establishment of Scope of Subcommittee Work.
4. Subcommittee Assignments.
5. Any Other Business Brought Before the Subcommittee.
6. Adjournment.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Information may be obtained from Captain William N. Spence, Commandant (G-MHM/83) U.S. Coast Guard, Washington, D.C. 20590, (202) 426-2306. Any member of the public may present a written statement to the Committee at any time.

Dated: December 20, 1978.

HENRY H. BELL,  
Rear Admiral, U.S. Coast Guard,  
Chief, Office of Merchant  
Marine Safety.

[FR Doc. 78-36125 Filed 12-27-78; 8:45 am]

#### [4910-14-M]

[CGD 78-1861]

#### LOUIS DREYFUS CORP.

#### Qualification as a Citizen of the United States

Notice is given that pursuant to 46 CFR 67.23-7, issued under the provisions of section 27A of the Merchant Marine Act, 1920, as added by the Act of September 2, 1958 (46 U.S.C. 883-1),

Louis Dreyfus Corporation of 24 Richmond Hill Avenue, Stamford, Connecticut 06904, incorporated under the laws of the State of New York, did on October 20, 1978, file with the Commandant, United States Coast Guard, in duplicate, an oath for qualification of the corporation as a citizen of the United States following the forms of oath prescribed in Form CG-1260.

The oath shows that:

(a) A majority of the officers and directors of the corporation are citizens of the United States;

(b) Not less than 90 percent of the employees of the corporation are residents of the United States;

(c) The corporation is engaged primarily in a manufacturing or mineral industry in the United States or in a Territory, District, or possession thereof;

(d) The aggregate book value of the vessels owned by the corporation does not exceed 10 percent of the aggregate book value of the assets of the corporation; and

(e) The corporation purchases or produces in the United States, its Territories or possessions not less than 75 percent of the raw materials used or sold in its operations.

The Commandant, United States Coast Guard, having found this oath to be in compliance with the law and regulations, on December 11, 1978, issued to Louis Dreyfus Corporation a certificate of compliance on Form CG-1262, as provided for in 46 CFR 67.23-7. The Certificate and any authorization granted thereunder will expire three years from December 11, 1978, unless there first occurs a change in the corporate status requiring a report under 46 CFR 67.23-7.

Dated: December 19, 1978.

HENRY H. BELL,  
Rear Admiral, U.S. Coast Guard,  
Chief, Office of Merchant  
Marine Safety.

[FR Doc. 78-36124 Filed 12-27-78; 8:45 am]

#### [4910-06-M]

Federal Railroad Administration

[FRA Waiver Petition Docket HS-78-12]

#### CURTIS, MILBURN AND EASTERN RAILROAD CO.

Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the Curtis, Milburn and Eastern Railroad Company (CM&E) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45

U.S.C. 64a(e)). That petition requests that the CM&E be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The CM&E seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-78-12, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590. Communications received before January 30, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

(Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), § 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).)

Issued in Washington, D.C. on December 19, 1978.

ROBERT H. WRIGHT,  
Acting Chairman,  
Railroad Safety Board.

[FR Doc. 78-36130 Filed 12-27-78; 8:45 am]

#### [4910-06-M]

[FRA Waiver Petition Docket HS-78-13]

#### SOUTH BRANCH VALLEY RAILROAD CO.

Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the South Branch Valley Railroad (SBVR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the SBVR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The SBVR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-78-13, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590. Communications received before January 30, 1979, will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590.

(Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), § 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).)

Issued in Washington, D.C. on December 19, 1978.

ROBERT H. WRIGHT,  
Acting Chairman,  
Railroad Safety Board.

[FR Doc. 36131 Filed 12-27-78; 8:45 am]

#### [4910-59-M]

National Highway Traffic Safety Administration

#### BIOMECHANICS ADVISORY COMMITTEE

Establishment

Notice is hereby given of the establishment of the Biomechanics Advisory Committee under the sponsorship of the National Highway Traffic Safety Administration (NHTSA). The Committee will advise the NHTSA Administrator on the appropriateness of procedures designed to minimize the risk of injury and to assure the rights and dignity of live and deceased humans used in research. It will also be asked to advise on the need for related research projects. It has seven members selected from among representatives of medicine, psychology, life sciences, engineering, law, administration, and other interested or affected fields. Four members are from the private sector, while three are Federal employees. Meetings of the Committee will be open to the public and agendas will be published in the FEDERAL REGISTER 15 days in advance of the meeting.

Additional information on the Committee may be obtained from the Office of the Executive Secretariat, National Highway Traffic Safety Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C. on: December 22, 1978.

WILLIAM H. MARSH,  
Executive Secretary.

[FR Doc. 78-36180 Filed 12-27-78; 8:45 am]

#### [4910-59-M]

#### SAFETY, BUMPER, AND CONSUMER INFORMATION PROGRAMS

Public Meeting

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on Wednesday, February 21, 1979, to answer questions from the public and industry regarding the Agency's safety, bumper, and consumer information programs. The meeting will begin at 8:30 a.m., run until 12 noon, and reconvene at 1:00 p.m. The meeting will be held at Rackham

Auditorium on the University of Michigan Campus in Ann Arbor, Michigan.

This is the third meeting to be held in response to requests that the Agency has received over the last year for periodic public technical meetings modeled after those conducted by the Environmental Protection Agency (EPA) for its motor vehicle emissions program. At these meetings, representatives of the Department will answer questions received in writing from the industry and the public.

Unlike the preceding two meetings, this meeting will be held jointly with the Bureau of Motor Carrier Safety of the Federal Highway Administration. The main subject for discussion at this meeting will be the Department of Transportation's plans for truck braking. Prior to this meeting, the NHTSA anticipates the publication of two Advanced Notices of Proposed Rulemaking which will indicate DOT's plans for rulemaking intended to incorporate stopping distances in the truck brake standard that can be met without antilock as well as information on DOT's longer range rulemaking plans to improve braking performance in large trucks. We are soliciting questions related to the truck brake standard for discussion at the meeting.

We will also accept questions relating to NHTSA's vehicle safety, bumper, or consumer information programs which are technical, interpretive or procedural in nature. The questions may relate to the research and development, rulemaking, or enforcement (including defects) phases of these activities. (Questions regarding this Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions.)

Questions for the meetings must be submitted in writing to William Marsh, NHTSA, Executive Secretary, Room 5212, 400 Seventh Street, SW., Washington, D.C. 20590. Only questions submitted in this manner and received not later than January 29, 1979 for the February 21, 1979 meeting will be answered. The individual, group, or company submitting a question does not have to be present at the meeting for the questions to be answered. A transcript will be made and will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within three weeks after the meeting.

An agenda consisting of the questions submitted in a timely and proper fashion will be available at the NHTSA Technical Reference Section several days before the meeting and at the meeting itself.

At this point, the industry response and Agency indications are that these meetings are potentially very useful and should be continued. Succeeding



meetings will be held at the EPA facility on the third Wednesday of even numbered months. Periodic participation of BMCS will be expected depending upon the questions submitted by the industry.

Issued in Washington, D.C. on December 22, 1978.

ROBERT E. DOHERTY,  
Assistant Executive Secretary.

[FR Doc. 78-36181 Filed 12-27-78; 8:45 am]

#### [4810-40-M]

### DEPARTMENT OF THE TREASURY

#### Office of the Secretary

[Supplement to Department Circular Public Debt Series—No. 30-78]

#### TREASURY NOTES

##### Series L-1982

DECEMBER 21, 1978.

The Secretary of the Treasury announced on December 20, 1978, that the interest rate on the notes designated Series L-1982, described in Department Circular—Public Debt Series—No. 30-78, dated December 14, 1978, will be 9% percent. Interest on the notes will be payable at the rates of 9% percent per annum.

PAUL H. TAYLOR,  
Fiscal Assistant Secretary.

[FR Doc. 78-36095 Filed 12-27-78; 8:45 am]

#### [7035-01-M]

### INTERSTATE COMMERCE COMMISSION

[Notice 765]

#### ASSIGNMENT OF HEARINGS

DECEMBER 22, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as well promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 107107 (Sub-463F), Alterman Transport Lines, Inc., now assigned for hearing on January 9, 1979, at Miami, Florida and will be held in Plaza One, Howard Johnson's Motel.

MC 123407 (Sub-454F), Sawyer Transport, Inc., now assigned February 6, 1979, at Phoenix, Az., is postponed indefinitely.  
MC 19553 (Sub-39F), Knox Motor Service, Inc., now assigned January 15, 1979, at Chicago, Ill., is postponed indefinitely.  
MC 139495 (Sub-355F), National Carriers, Inc., now assigned January 24, 1979 at Kansas City, MO, is cancelled and transferred to modified procedure.  
MC 107818 (Sub-90F), Greenstein Trucking Company, now assigned January 10, 1979 at Milwaukee, Wis., is cancelled and transferred to modified procedure.  
MC 134300 (Sub-31F), Triple R. Express, Inc., now being assigned for hearing on March 12, 1979, (2 days), at New York, NY., in a hearing room to be later designated.  
MC P 13050, J.B. Williams Express, Inc.—Purchase (Portion)—National Transportation CO., DBA National Transport 101.  
MC 95336 (Sub-8), J.B. Williams Express, Inc., No., MC-95336 (Sub-No. 9), J.B. Williams Express, Inc., now being assigned for hearing on March 14, 1979, (3 days), at New York, NY., in a hearing room to be later designated.  
MC 144285F, Bay Haven Marina, Inc., now assigned January 10, 1979, at Chicago, Ill., is cancelled and application dismissed.  
MC 113678 (Sub-728F), Curtis, Inc., application dismissed.  
MC 114273 (Sub-402F), CRST, Inc., now being assigned for hearing on January 23, 1979, at the Office of Interstate, Commerce Commission, Washington, DC.

H. G. HOMME, Jr.,  
Secretary.

[FR Doc. 78-36191 Filed 12-27-78; 8:45 am]

#### [7035-01-M]

### EVALUATION OF INTERCORPORATE HAULING REGULATION

#### Public Meeting Schedule

The December 11, 1978 Federal Register Request for Comments on this subject also announced plans to hold public meetings, with locations and dates to be advised.

Schedules for public meetings have been arranged. The purpose of the meetings is to develop further information about the effects of policy alternatives outlined in the FEDERAL REGISTER notice of December 11.

The meeting dates and locations are:

Chicago, Ill., January 8, 1979, 9:00 a.m., Rm. 349, Dirksen Bldg., 230 S. Dearborn St.  
Philadelphia, PA, January 15, 1979, 9:00 a.m., Rm. 5020, Gateway Bldg., 3535 Market Street.  
Ft. Worth, TEX, January 22, 1979, 9:00 a.m., Sheraton-Ft. Worth Hotel, Long Horn Room, Mezzanine, 815 Main St.  
Los Angeles, CAL, January 29, 1979, 9:00 a.m., Los Angeles Civic Center, Dept. of Water and Power Auditorium "A" Level, 111 North Hope Street.  
Atlanta, GA, February 8, 1979, 9:00 a.m., Rm. 556, Federal Bldg., 275 Peachtree St., NE.

It is requested that anyone wishing to participate at either meeting con-

tact one of the following individuals at least one week in advance:

Robert G. Rhodes, (202) 275-7686, Interstate Commerce Commission, Bureau of Economics, Rm. 5355.  
Brinkley Garner, (202) 275-7375, 12th & Constitution Ave., NW, Washington, D.C. 20423.

Each participant is requested to provide at the meeting five copies of his presentation. Additional meetings may be scheduled if the public response warrants them.

ROBERT G. RHODES,  
Assistant Director,  
Bureau of Economics.

[FR Doc. 78-36347 Filed 12-27-78; 8:45 am]

#### [7035-01-M]

[Permanent Authority Decisions Volume No. 59]

#### PERMANENT AUTHORITY APPLICATIONS

##### Decision-Notice

Decided: December 14, 1978.

The following applications are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR §1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules

and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of section 10930 (formerly section 210) of the Interstate Commerce Act.

It is ordered: In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this de-

cision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. HOMME, Jr.,  
Secretary.

MC 4941 (Sub-41F), filed October 16, 1978. Applicant: QUINN FREIGHT LINES, INC., 1093 N. Montello Street, Brockton, MA 02403. Representative: John F. O'Donnell, P.O. Box 238, Milton, MA 02187. To operate as a common carrier, by motor vehicle, over irregular routes, transporting paper and paper products, from the plant site of International Paper Company, at our near (a) Ticonderoga, NY, and (b) Jay, ME, to points in MD and PA, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Boston, MA, or Washington, DC.)

MC 14215 (Sub-18F), filed November 16, 1978. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, OH 43952. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. To operate as a common carrier, by motor vehicle, over irregular routes, transporting lime and limestone, between points in OH, PA, VA, and WV. (Hearing site: Columbus, OH, or Washington, DC.)

MC 29613 (Sub-9F), filed November 1, 1978. Applicant: JAYNE'S MOTOR FREIGHT, INC., 860 North Avenue East, Elizabeth, NJ 07201. Representative: John L. Alfano, 860 Mamaroneck Avenue, Harrison, NY 10528. To operate as a common carrier, by motor vehicle, over irregular routes, transporting general commodities (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Suffolk County, NY, on the one hand, and, on the other, Philadelphia, PA, New York, NY, points in NJ, points in Nassau, Rockland, and Westchester Counties, NY, and those points in CT on and west of U.S. Hwy. 5. (Hearing site: New York, NY.)

MC 30378 (Sub-61F), filed November 13, 1978. Applicant: ASSOCIATED

TRANSPORTS, INC., 9305 Pershall Road, Hazelwood, MO 63042. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. To operate as a common carrier, by motor vehicle, over irregular routes, transporting automobiles, trucks, and chassis, in initial movements, in truckaway service, (1) from the facilities of Ford Motor Company, in St. Louis County, MO, to points in AZ, CA, CT, DE, ID, ME, MD, MA, NV, NH, NJ, NY, OR, RI, TX, UT, VT, VA, WA, WV, and DC, and (2) from the facilities of Ford Motor Company, in Clay County, MO, to points in AZ, CA, CT, DE, FL, GA, ME, MD, MA, NH, NJ, NM, NY, RI, VT, WA, and DC, and those in TX on, south, and east of a line beginning at the AR-TX State line and extending along Interstate Hwy 30 to junction U.S. Hwy 380, at or near Greenville, TX, then along U.S. Hwy 380 to junction U.S. Hwy 283, then along U.S. Hwy 283 to junction U.S. Hwy 87, then along U.S. Hwy 87 to junction U.S. Hwy 83, and then along U.S. Hwy 83 to Lored, TX. (Hearing site: Detroit, MI.)

MC 30844 (Sub-621F), filed August 7, 1978, previously noticed in the FEDERAL REGISTER issue of October 19, 1978. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting meats, meat products and meat byproducts, and articles distributed by meat-packing houses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wisconsin Beef Industries, Inc., at Eau Claire, WI, to points in CT, DE, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, TN, VT, WV, and DC, restricted to the transportation of traffic originating at the named origin facilities. This republication amends the destination territory by changing TX to TN. (Hearing site: St. Paul, MN.)

MC 33641 (Sub-136F), filed October 17, 1978. Applicant: IML FREIGHT, INC., 2175 So. 3270 West, P.O. Box 30277, Salt Lake City, UT 84125. Representative: Michael S. Rubin, 256 Montgomery, Street, San Francisco, CA 94104. To operate as a common carrier, by motor vehicle, over irregular routes, transporting general commodities (except those requiring special equipment), serving Dayton and Carson City, NV as off-route points in connection with carrier's otherwise-authorized regular-route operations between Reno and McGill, NV. Condition: The certificate to be issued in



this proceeding will be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: San Francisco, CA, or Carson City, NV.)

MC 35320 (Sub-158F), filed August 15, 1978. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Ethyl-VCA Kentucky Corporation, at or near La Grange, KY, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Louisville, KY, or Atlanta, GA.)

MC 41849 (Sub-43F), filed November 14, 1978. Applicant: KEIGHTLEY BROS., INC., a Delaware corporation, 1601 S. 39th Street, St. Louis, MO 63110. Representative: Patrick M. Browne (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting coal in bulk, between points in AL, AR, IL, IN, IA, KS, KY, MI, MS, MO, OH, OK, TN, and WI. (Hearing site: St. Louis, MO.)

MC 42261 (Sub-138F), filed August 10, 1978, previously noticed in the FEDERAL REGISTER of October 19, 1978. Applicant: LANGER TRANSPORT CORP., Box 305, Jersey City, NJ 07303. Representative: W. C. Mitchell, 370 Lexington Avenue, New York NY 10017. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *petroleum oil*, in bulk, in tank vehicles, from the facilities of Rofite Company, at or near Elizabeth, NJ, to points in AL, AR, LA, MS, and TN, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: New York, NY, or Newark, NJ.)

NOTE.—This republication modifies the commodity description.

MC 53841 (Sub-16F), filed October 13, 1978. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, 205 Ross Street, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealers, and deadener compounds* (except commodities in bulk), and (2) *containers*, when moving in mixed shipments with the commodities named in (1) above, from the facilities of Pennzoli Company, at Oil City and Roscoeville, PA, and the facilities of

Wolf's Head Oil Refining Company, at Reno, PA, to points in CT, DE, IL, IN, MA, MD, ME, MI, NH, NY, RI, and VT. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 53841 (Sub-17F), filed October 16, 1978. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, 205 Ross Street, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *petroleum, petroleum products, vehicle body sealers, and deadener compounds* (except commodities in bulk), from the facilities of Quaker State Oil Refining Company, at (a) Farmers Valley, Emlenton, North Warren, and New Kensington, PA, and (b) Congo, WV, to points in IL, IN, PA, MI, MD, MO, NY, and NJ. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 53965 (Sub-143F), filed November 17, 1978. Applicant: GRAVES TRUCK LINE, INC., 2130 South Ohio, P.O. Drawer 1837, Salina, KS 67401. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in AZ, AR, CA, IL, IA, MO, NE, NM, NV, OK, TX, and SD.

MC 53965 (Sub-144F), filed November 24, 1978. Applicant: GRAVES TRUCK LINE, INC., 2130 South Ohio, Salina, KS 67401. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Wichita and Pratt, KS; over U.S. Hwy 54, serving all intermediate points. (Hearing site: Wichita, KS.)

MC 59367 (Sub-128F), filed October 10, 1978. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Fort Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *building materials*, and (2) *materials and supplies* used in the installation of the commodities in (1) above, (except commodities in bulk), from the facili-

ties of Bird & Son, Inc., at Chicago, IL, to points in IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, and WI. (Hearing site: Chicago, IL.)

MC 60014 (Sub-89F), filed October 16, 1978. Applicant: AERO TRUCKING, INC., an Ohio corporation, Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *iron and steel articles*, from the facilities of Republic Steel Corporation, at or near Gadsden, AL, to points in CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 60186 (Sub-57F), filed October 12, 1978. Applicant: NELSON FREIGHTWAYS, INC., P.O. Box 356, 47 East Street, Rockville, CT 06066. Representative: Edward G. Villalon, 1032 PA Building, PA Avenue & 13th Street, NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in by (a) retail home improvement stores, (b) retail home furnishings stores, and (c) retail lumber stores, (except commodities in bulk), between points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC. (Hearing site: Washington, DC.)

MC 61825 (Sub-87F), filed October 30, 1978. Applicant: ROY STONE TRANSFER CORP., V.C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1)(a) *glass and plastic containers*, and (b) *accessories for glass and plastic containers*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Brockway Glass Company, Inc., in Jefferson and Clearfield Counties, PA, on the one hand, and, on the other, points in GA, NC, and SC, and those in VA on and south of a line beginning at the WV-VA State line and extending along U.S. Hwy 33, to Richmond, then along VA Hwy 33 to the Chesapeake Bay. (Hearing site: Washington, DC.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. Section 11343(a) [formerly Section 5(2) of the Interstate Commerce Act] or submit an affidavit indicating why such approval is unnecessary.

MC 61955 (Sub-25F), filed November 17, 1978. Applicant: CENTROPOLIS

TRANSFER CO., INC., 701 North Sterling, Sugar Creek, MO 64054. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *fertilizer and fertilizer ingredients*, in bulk, from the facilities of Brunswick River Terminal, Inc., at or near Brunswick, MO, to points in AR, IL, IN, IA, KS, MO, NE, OK, and TN. (Hearing site: Kansas City, MO.)

MC 63417 (Sub-179F), filed October 5, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *small arms ammunition and primers*, from the facilities of Omack Industries, at Lewiston, ID, to those points in the United States in and east of ND, SD, NE, CO, and NM (2) *hand tools, assayers scales, melting kettles, and sporting goods*, from the facilities of RCBS, division of Omack Industries, at Oroville, CA, to those points in the United States in and east of ND, SD, NE, CO, and NM (3) *automotive parts and accessories, paint, nuts, bolts, display racks, catalogs, and advertising material*, from the facilities of (a) E-T Industries and (b) Filter Dynamics, Inc., at Benecia, City of Industry, and Santa Ana, CA, to those points in the United States in and east of ND, SD, NE, CO, and NM. Condition: The certificate issued in this proceeding, as to part (1), shall be limited, in point of time, to a period expiring 5 years from its date of issue. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 71593 (Sub-14F), filed October 30, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Boston, MA, Chicago, IL, and New York, NY, on the one hand, and, on the other New Orleans, LA, and Dallas, Houston, and San Antonio, TX, restricted to the transportation of traffic moving on freight forwarder bills of lading. (Hearing site: New York, NY.)

MC 82509 (Sub-5F), filed September 14, 1978, previously published in the FEDERAL REGISTER issue of October 31, 1978. Applicant: Richard C. Noerr, Jr.,

d.b.a. Metal Transport, P.O. Box 492, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *brass rods and unfinished brass shapes*, (except commodities which because of size or weight require the use of special equipment), from the facilities of Cerro Metal Products, at or near (a) Bellefonte, PA and (b) Weyers Cave, VA, to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, (except Chickasha), PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, and (2) *waste materials*, from the destination points in (1) above, to the above-named origin facilities. (Hearing site: San Francisco, CA, or Harrisburg, PA.)

NOTE.—This republication shows the territory in part (2) above.

MC 83539 (Sub-511F), filed November 13, 1978. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, TX 75227. Representative: Thomas E. James (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *sailboats, powerboats, and tent camping trailers*, and (2) *parts* used in the manufacture of the commodities in (1) above, from points in Orange County, CA, to points in the United States (including AK, but excluding HI). (Hearing site: Los Angeles, CA, or Dallas, TX.)

MC 93186 (Sub-3F), filed October 3, 1978. Applicant: EUDEL WATTS, III, d.b.a. WATTS TRANSFER & DELIVERY SERVICE, 825 First Avenue, Rock Island, IL 61201. Representative: Daniel C. Sullivan, Suite 1600, 10 S. La Salle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *printed matter*, from the facilities of the McCleery Cummings Company, Inc., at or near Washington, IA, to points in IL, IN, MI, and WI. (Hearing site: Chicago, IL.)

MC 86690 (Sub-4F), filed August 28, 1978. Applicant: BOND TRANSFER CO., INC., 1615 Cuba Street, Baltimore, MD 21230. Representative: S. Harrison Kahn, Suite 733 Investment Building, 1511 K Street, NW., Washington, DC 20005. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) *such commodities as are dealt in by grocery and food business houses*, and (2) *materials, equipment, and supplies* used in the conduct of the businesses named in (1) above, from points in MD, VA, NY, NJ, PA, DE, CT, MA, NC, and SC, to Landover, Jessup, Baltimore, and Columbia, MD, and DC,

under continuing contract(s) with Giant Food, Inc., of Washington, DC. (Hearing site: Baltimore, MD.)

MC 94265 (Sub-285F), filed November 6, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, N.E., Atlanta, Ga 30342. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in DE, IL, IN, IA, MD, MN, MO, NC, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin. (Hearing site: Kansas City, KS, or Washington, DC.)

MC 94265 (Sub-286F), filed November 7, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, N.E., Atlanta, Ga 30342. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *food products, and citrus products and byproducts*, from the facilities of Tropicana Products, Inc., at or near Bradenton and Fort Pierce, FL, to points in MD, NC, VA, WV, and DC. (Hearing site: Tampa, FL, or Washington, DC.)

MC 95876 (Sub-254F), filed October 11, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *lumber, lumber products, and millwork*, from points in Harding, Butte, Lawrence, Meade, Fall River, Pennington, and Custer Counties, SD, to points in IA, IL, IN, KY, MI, MN, NY, OH, PA, and WI. (Hearing site: Denver, CO, or Rapid City, SD.)

MC 95876 (Sub-255F), filed October 12, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *aircraft ground support equipment*, from Glenwood, MN, to points in the United States (except AK and HI). (Hearing site: None specified.)



MC 96881 (Sub-22F), filed October 16, 1978. Applicant: FINE TRUCK LINE, INC., 801 West Dodson Avenue, Fort Smith, AR 72901. Representative: Don A. Smith, Post Office Box 43, 510 North Greenwood, Fort Smith, AR 72902. To operate as a common carrier, by motor vehicle, over regular routes, transporting *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Idabel, OK and Tulsa, OK: From Idabel over U.S. Hwy 70 to junction Indian Nation Turnpike, then over Indian Nation Turnpike to junction U.S. Hwy 75, then over U.S. Hwy 75 to Tulsa, and return over the same route, serving no intermediate points. (Hearing site: Texarkana, AR-TX.)

MC 99096 (Sub-2F), filed October 10, 1978. Applicant: FILLMORE FREIGHT LINES, INC., 210 East Fifth Street, East Liverpool, OH 43920. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a common carrier, by motor vehicle, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment), (1) between East Liverpool, OH, on the one hand, and, on the other, points in OH, and those in Allegheny, Beaver, and Washington Counties, PA, (2) between points in Hancock County, WV, on the one hand, and, on the other, points in OH and PA, (3) between Toronto, OH, on the one hand, and, on the other, points in Allegheny, Beaver, and Washington Counties, PA, and (4) between points in Beaver County, PA, on the one hand, and, on the other, points in OH. (Hearing site: Washington, DC.)

MC 103926 (Sub-76F), filed September 5, 1978. Applicant: W. T. MAYFIELD SONS TRUCKING CO., a corporation, P.O. Box 947, Mableton, GA 30059. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. To operate as a common carrier, by motor vehicle, over regular routes, transporting (1) cranes and contractors' equipment, and (2) attachments, parts, and accessories for the commodities named in (1) above, between points in AL, AR, FL, GA, IL, IN, KY, LA, MD, MS, MO, NC, OK, SC, TN, TX, VA, and WV. (Hearing site: Tampa, FL, or Atlanta, GA.)

MC 103993 (Sub-942F), filed October 26, 1978. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). To operate as a common carrier, by motor vehicle, over regular

routes, transporting *hardboard, composition board, and lumber and lumber products*, from Galveston, TX, to those points in the United States in and east of MT, WY, CO, and NM. Condition: The certificate to be issued shall be limited to a period expiring 3 years from its date of issue, unless, prior to the expiration (but not less than 6 months prior), applicant files a petition for permanent extension of the certificate. (Hearing site: New York, NY.)

MC 105045 (Sub-88F), filed November 8, 1978. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania Street, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *industrial furnaces, parts for industrial furnaces, and incinerator parts*, from Meadville, PA, to points in NC and SC. (Hearing site: Washington, DC.)

MC 106401 (Sub-55F), filed October 17, 1978. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Thomas G. Sloan (same as above). To operate as a common carrier, by motor vehicle, over regular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of National Home Products Co., at or near Port Gibson, MS, as an off-route point in connection with carrier's otherwise-authorized regular route operations, restricted to the transportation of traffic moving from, to, or through Atlanta, Ga. (Hearing site: Jackson, MS, or Washington, DC.)

MC 107012 (Sub-286F), filed October 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as above). To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) prefabricated gas venting systems, and chimneys, and (2) parts and accessories for the commodities in (1) above, from the facilities of Dura-Vent Corporation, at or near Redwood City, CA, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: San Francisco, CA, or Washington, DC.)

MC 107012 (Sub-287F), filed October 16, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative:

Gary M. Crist (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *floor coverings, and materials and supplies* used in the manufacture, installation, and distribution of floor coverings, from the facilities of Bigelow-Sanford, Inc., at or near (a) Lyster, GA, and (b) Greenville and Landrum, SC, to points in VA, WV, MD, DE, PA, NY, NJ, CT, RI, MA, VT, NH, ME, and DC. (Hearing site: Atlanta, Ga, or Washington, DC.)

MC 107403 (Sub-1132F), filed November 1, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *sodium bifluoride*, in bulk, in tank vehicles, from Paulsboro, NJ, to Tahawus, NY. CONDITION: Pursuant to the decision in MC-107403 (Sub-1101F) served October 19, 1978, this proceeding is held open until such time as a determination of applicant's fitness has been made in MC-107403 (Sub-No. 1105F). (Hearing site: Washington, DC.)

MC 108341 (Sub-118F), filed October 13, 1978. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Representative: Jack F. Counts, P.O. Box 26125, Charlotte, NC 28213. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *tanks, and materials and supplies* used in the installation of tanks, from the facilities of Pfaudler Company, Division of Sybron Corp., at or near Rochester, NY, to points in DE, MD, WV, VA, TN, KY, AR, LA, FL, GA, SC, NC, AL, MS, and DC. (Hearing site: Rochester, NY, or Washington, DC.)

MC 108631 (Sub-9F), filed October 16, 1978. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Road at Industrial Drive, Bethlehem, PA 18017. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) steel transmission poles, and (2) parts and accessories for steel transmission poles, between the facilities of Meyer Industries, in Luzerne County, PA, on the one hand, and, on the other, points in CT, DE, GA, KY, MA, MD, ME, NC, NH, NJ, NY, OH, SC, VA, VT, and WV. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 109818 (Sub-35F), filed November 16, 1978. Applicant: WENGER TRUCK LINE INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a common carrier, by motor vehicle,

over irregular routes, transporting (1)(a) grain storage equipment, grain drying equipment, accessories for grain storage and grain drying equipment, and metal buildings, and (b) materials and supplies used in the manufacture of the commodities named in (1)(a) above, (except commodities in bulk), (i) from Grand Island and Kearney, NE, to points in IA, IN, IL, MN, MI, MO, WI, ND, and SD, (ii) from Rensselaer, IN, to points in IA, IL, MN, MI, MO, WI, NE, ND, and SD, and (iii) from Fort Dodge, IA, to points in IN, IL, MN, MI, MO, WI, NE, ND, and SD; and (2) materials and supplies used in the manufacture of commodities named in (1)(a) above, from Chicago, IL, to the facilities of Chief Industries, Inc., at Grand Island and Kearney, NE. (Hearing site: Omaha, NE, or Chicago, IL.)

MC 109538 (Sub-27F), filed November 13, 1978. Applicant: CHIPPEWA MOTOR FREIGHT, INC., 2645 Harlem Street, Eau Claire, WI 54701. Representative: Arthur J. Berg (same as above). To operate as a common carrier, by motor vehicle, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Chicago, IL, and Indianapolis, IN: from Chicago over Interstate Hwy 94 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 65, then over Interstate Hwy 65 to Indianapolis, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only. (Hearing site: Chicago, IL.)

MC 111231 (Sub-248F), filed October 16, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a common carrier, by motor vehicle, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Oklahoma City, OK and Texarkana, AR: From Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 270, then over U.S. Hwy 270 to junction U.S. Hwy 177, then over U.S. Hwy 177 to junction OK Hwy 3W, then over OK Hwy 3W to Ada, OK, then over OK Hwy 3 to Antlers, OK, then over U.S. Hwy 271 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Idabel, OK, then over U.S. Hwy 259 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Texarkana, and return over the same

route, serving no intermediate points except Atoka, OK, for purposes of joinder only. (Hearing site: Little Rock, AR, or Washington, DC.)

MC 112223 (Sub-117F), filed October 30, 1978. Applicant: QUICKIE TRANSPORT CO., a corporation, 1700 New Brighton Boulevard, Minneapolis, MN 55413. Representative: Earl Hacking (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *commodities in bulk*, between points in MN, restricted to the transportation of traffic having a prior or subsequent movement by rail or water. (Hearing site: Minneapolis or St. Paul, MN.)

MC 112595 (Sub-82F), filed November 16, 1978. Applicant: FORD BROTHERS, INC., Box 727, Ironton, OH 45638. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *petroleum pitch*, in bulk, in tank vehicles, from the facilities of Ashland Petroleum Company, Division of Ashland Oil, Inc., at or near Catlettsburg, KY, to points in AL, CT, DE, FL, GA, LA, MN, MA, MI, MO, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WI, OH, WV, IL, IN, MI, AR, IA, and DC. (Hearing site: Columbus, OH, or Louisville, KY.)

MC 113325 (Sub-154F), filed November 9, 1978. Applicant: SLAY TRANSPORTATION CO., INC., 2001 South Seventh Street, St. Louis, MO 63104. Representative: T. M. Tahan (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *acids and chemicals*, in bulk, in tank vehicles, from Decatur, AL, to points in IL, IA, and MO. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 113528 (Sub-37F), filed November 14, 1978. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36601. Representative: Joy Stephenson (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *metal articles*, (except commodities which because of size or weight require the use of special equipment), from the facilities of Southeastern Coated Products, at or near Columbia, SC, to points in LA, MS, and those in AL on and north of U.S. Hwy 278. (Hearing site: Columbia, SC, or Birmingham, AL.)

MC 114045 (Sub-521F), filed November 17, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, trans-

porting *adhesives, and gelatines*, in containers, from Laredo, TX, to Chicago, IL, and Boston, MA. (Hearing site: Chicago, IL, or Dallas, TX.)

MC 114965 (Sub-62F), filed November 13, 1978. Applicant: CYRUS TRUCK LINE, INC., P.O. Box 327, Iola, KS 66749. Representative: Charles H. Apt, 104 South Washington, Iola, KS 66749. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *dry fertilizer and dry fertilizer ingredients*, from the facilities of Brunswick River Terminal, Inc., at Brunswick, MO, to points in AR, IL, IN, IA, KS, KY, MO, NE, OK, and TN. (Hearing site: Kansas City, MO, or Topeka, KS.)

MC 115162 (Sub-433F), filed October 4, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) fire brick, fire clay, bonding mortar, furnace lining, kiln lining, and refractory products (2) equipment, materials, and supplies used in the installation of the commodities in (1) above (except commodities in bulk, in tank vehicles), and (3) materials and supplies used in the manufacture of the commodities in (1) above (except commodities in bulk, in tank vehicles), (a) between the facilities of A. P. Green Refractories Co., at Mexico and Fulton, MO, on the one hand, and, on the other, points in the Lower Peninsula of MI, those points in NY on and west of Interstate Hwy 87, and points in CO, PA, and OH, and (b) from the facilities of A. P. Green Refractories Co., at Mexico and Fulton, MO, to ports of entry on the international boundary line between the United States and Canada in MI and NY; restricted in (b) to the transportation of traffic destined to points in the Provinces of Ontario and Quebec, Canada; and (4) materials and supplies used in the manufacture of the commodities named in (1) above, and materials, equipment, and supplies used in the installation of the commodities named in (1) above (except commodities in bulk, in tank vehicles), from points in AL, FL, GA, MS, LA, and TX, to points in Audrain and Callaway Counties, MO. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: St. Louis, MO, or Washington, DC.)

Note.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority To Handle Traffic to and from points in



Canada published in the *FEDERAL REGISTER* on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the *FEDERAL REGISTER* and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 115162 (Sub-434F), filed October 4, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *plastic articles* (except commodities in bulk, in tank vehicles), from Mexico, MO, to points in AL, TX, FL, NJ, LA, GA, NC, SC, TN, KY, PA, NY, MS, and VA. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 115162 (Sub-435F), filed October 18, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *zinc oxide*, *zinc dust*, *zinc slabs*, and *zinc dross*, (except commodities in bulk, in tank vehicles), from the facilities of St. Joe Zinc Company, in Beaver County, PA, to points in GA, FL, AL, MS, LA, TX, and TN; and (2) *materials and supplies* used in the manufacture, installation, and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), from points in GA, FL, AL, MS, LA, TX, and TN, to the facilities of St. Joe Zinc Company, in Beaver County, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 115311 (Sub-315F), filed October 10, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting malt beverages, and materials and supplies used in the manufacture and distribution of malt beverages, (except commodities in bulk), between the facilities of Miller Brewing Company, at (a) Eden, NC, (b) Fulton, NY, (c) Milwaukee, WI, (d) Fort Worth, TX, and (e) Albany, GA. (Hearing site: Milwaukee, WI.)

MC 115311 (Sub-317F), filed October 17, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representa-

tive: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *plastic resins*, from the facilities of Synthetic Materials Corporation, in Harris County, TX, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials, equipment, and supplies* used in the manufacture, installation, and distribution of plastic resins, from the destination territory described in (1) above, to the origin facilities named in (1) above. (Hearing site: Houston or Dallas, TX.)

MC 115311 (Sub-318F), filed October 18, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *facing brick*, *fire brick*, *fire clay*, and *structural facing tile*, from the facilities of Elgin-Butler Brick Company, in Bastrop County, TX, to points in the United States in and east of WI, IA, NE, KS, OK, and TX. (Hearing site: Houston or Dallas, TX.)

MC 115331 (Sub-469F), filed October 16, 1978. Applicant: TRUCK TRANSPORT INC., a Delaware corporation, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery and hardware stores, (a) from Jackson, MS, to points in IL, IN, IA, MI, MO, and OH, and (b) from Fort Madison, IA, to points in IL, IN, IA, KY, MI, MN, MO, NE, OH, CT, PA, TX, GA, MA, NY, ND, SD, NJ, WI, AR, KS, TN, OK, and WV; (2)(a) *chemicals and such commodities* as are dealt in by grocery and hardware stores, and (b) *materials and supplies* used in the manufacture and distribution of the commodities named in (2)(a) above, from points in MA, CT, RI, NY, NJ, and PA, to points in IA, MO, IL, IN, and MI. (Hearing site: Washington, DC, or Chicago, IL.)

MC 115654 (Sub-117F), filed October 17, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Building, 13th & Pennsylvania Ave. NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *instant formula and pharmaceutical products*, and (2) *accessories* for the commodities in (1) above, in vehicles equipped with mechanical refrigeration, from Columbus and Cincinnati, OH, and Nashville and Mem-

phis, TN, to Evansville, IN, and points in KY and TN, restricted to the transportation of traffic originating at the facilities of Rose Laboratories at the named origin points. (Hearing site: Columbus, OH, or Nashville, TN.)

NOTE.—In view of the findings in No. MC-115654 (Sub-No. 43), of which official notice is taken the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its date of issue unless, prior to its expiration (but not less than 6 months prior), applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 115841 (Sub-648F), filed September 22, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., An Alabama corporation, 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TX 37919. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except in bulk), from the facilities of General Foods Corporation, at Dover, DE, to points in CA, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 115931 (Sub-71F), filed October 16, 1978. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *Sawmill machinery, hydraulic portable sawmills, and wood shaving mills*, and (2) *parts and attachments* for the commodities named in (1) above, from Mondovi, WI, to points in CA, CO, ID, MN, MT, NV, ND, OR, SD, UT, WA, and WY. (Hearing site: Milwaukee, WI.)

MC 116645 (Sub-26F), filed November 14, 1978. Applicant: DAVIS TRANSPORT CO., a corporation, P.O. Box 56, Gilcrest, CO 80623. Representative: Leslie R. Kehl, 1660 Lincoln Street, Suite 1600, Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *liquid feed ingredients*, in bulk, in tank vehicles, from the facilities of Cargill, Inc., at Sterling, CO, to points in KS, NE, OK, SD, TX, and WY. (Hearing site: Denver, CO.)

MC 117563 (Sub-5F), filed October 30, 1978. Applicant: JOHN T. PESCHKE d.b.a. JOHN T. PESCHKE, Box 506, Waubay, SD 57273. Representative: James T. Flescher, 1745 Uni-

versity Avenue, St. Paul, MN 55104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *dry animal and poultry feed*, from the facilities of Cargill, Inc., Nutrena Feed Division, at New Richland, MN, to points in SD. (Hearing site: St. Paul or Minneapolis, MN.)

MC 118263 (Sub-75F), filed October 27, 1978. Applicant: COLDWAY CARRIERS, INC., P.O. Box 2038, Clarksville, IN 47130. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Continental Freezers of Illinois, at or near Chicago, IL, on the one hand, and, on the other, points in IN, KY, OH, TN, and WV. (Hearing site: Chicago, IL, or Louisville, KY.)

MC 119726 (Sub-152F), filed October 12, 1978. Applicant: N. A. B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beatty, 130 East Washington Street, Suite 1000, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk, in tank vehicles), (1) between the facilities of Ralston Purina Company, at or near Clinton and Davenport, IA, on the one hand, and, on the other, points in IN, MI, and OH, and (2) between the facilities of Ralston Purina Company, at or near Dunkirk, NY, on the one hand, and, on the other, the facilities of Ralston Purina Company, at or near Mechanicsburg, PA. (Hearing site: Chicago, IL.)

MC 121658 (Sub-13F), filed November 15, 1978. Applicant: STEVE D. THOMPSON TRUCKING INC., 1205 Percy Street, Winnsboro, LA 71295. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Shreveport, LA, and Dallas, TX; over Interstate Hwy 20, serving no intermediate points. (Hearing site: Dallas, TX, or Monroe, LA.)

MC 123091 (Sub-25F), filed October 16, 1978. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: James Duval, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. To operate

as a *common carrier*, by motor vehicle, over irregular routes, transporting *iron and steel articles*, from points in Georgetown County, SC, to points in IL, IN, KY, MO, OH, PA, TN, WV, the Lower Peninsula of MI, and those points in NY on and west of Interstate Hwy 81. (Hearing site: Washington, DC.)

MC 124078 (Sub-904F), filed November 16, 1978. Applicant: SCHWERMANN TRUCKING CO., A corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *cement*, from the facilities of Dundee Cement Company and Louisville Cement Company, at or Cincinnati, OH, to points in IN and KY. (Hearing site: Cincinnati or Columbus, OH.)

MC 124211 (Sub-343F), filed October 10, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *industrial oils and greases*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between City of Commerce, Los Angeles, and Saugus, CA, on the one hand, and, on the other, points in the United States (except AK, CA, and HI). (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations are involved.

MC 124251 (Sub-53F), filed October 18, 1978. Applicant: JACK JORDAN, INC., P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *alumina hydrate*, from points in Murray County, GA, to points in OK. (Hearing site: Atlanta, GA.)

MC 125335 (Sub-36F), filed November 13, 1978. Applicant: GOOD-WAY, INC., a Maryland corporation, P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *frozen foods*, and (2) *materials and supplies* used in the manufacture and distribution of frozen foods, (except commodities in bulk), between the facilities of The Pillsbury Company, at or near Murfreesboro and Nashville, TN, on the one hand, and, on the other, points in TX, and points in and east of MN, IA, MO, AR, and LA (except TN), restricted to the transportation of traffic originating at or

destined to the facilities of The Pillsbury Company, at or near Murfreesboro and Nashville, TN. (Hearing site: Minneapolis, MN, or Harrisburg, PA.)

MC 125433 (Sub-169F), filed November 2, 1978. Applicant: F-B TRUCK LINE CO., a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: Gary B. Weight (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *plastic pipe and plastic pipe fittings*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (a) between Bakersfield, Sun Valley, and Santa Ana, CA, on the one hand, and, on the other, Kansas City, MO, Cleveland, OH, Stone Mountain, GA, Chicago, IL, Friedensberg, PA, Pinnells Park, Miami, Guyana, and Pompano Beach, FL, Oklahoma City, OK, Denver, CO, and points in IN, LA, MI, MN, NE, WI, and TX, and (b) between Cleveland, OH, on the one hand, and, on the other, Bakersfield, Sun Valley, and Santa Ana, CA, Kansas City, MO, Stone Mountain, GA, Chicago, IL, Friedensberg, PA, Pinnells, CO, and points in IN, LA, MI, MN, NE, WI, and TX. (Hearing site: Los Angeles, CA, or Salt Lake City, UT.)

MC 125535 (Sub-9F), filed November 21, 1978. Applicant: JOHN SHARP TRUCKING CO., INC., a New Jersey corporation, 12015 Manchester Road, Suite 118, St. Louis, MO 63131. Representative: Donald S. Helm (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1)(a) *shelves, bins, counters, refrigerators, freezers, cooling rooms, and cooling boxes*, and (b) *parts and accessories* for the commodities named in (1)(a) above, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between Cherry Hill, NJ, on the one hand, and, on the other, points in the United States in and east of ND, SD, KS, NE, OK, and TX (except CT, DE, MD, NJ, PA, VA, WV, and DC), under continuing contract(s) with Hussman Refrigerator Co., of Cherry Hill, NJ. (Hearing site: Washington, DC.)

MC 125777 (Sub-233F), filed October 10, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60604. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *grinding balls*, from Kansas City, MO, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Kansas City, MO, or Chicago, IL.)



MC 126118 (Sub-110F), filed November 13, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *foodstuffs* (except in bulk), from points in Cameron, Hidalgo, and Willacy Counties, TX, to points in AZ, CA, CO, KS, NE, NV, NM, ND, OK, SD, UT, and WY.

NOTE.—Dual operations are involved in this proceeding.

MC 127042 (Sub-229F), filed October 23, 1978. Applicant: HAGEN, INC., P.O. Box 98, Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tassar (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting *frozen fruits and frozen vegetables*, in containers, from Sioux City, IA, to points in IL, KS, MN, MO, NE, ND, SD, and WI (Hearing site: Sioux City, IA.)

MC 128633 (Sub-20F), filed October 20, 1978. Applicant: LAUREL HILL TRUCKING CO., a corporation, 614 New County Road, Secaucus, NJ 07094. Representative: William J. Augello, 120 Main Street, P.O. Box, Z, Huntington, NY 11734. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting (1) (a) *drugs, toilet preparations, cleaning, scouring and washing compounds, disinfectants, disposable towels, chemicals, pigments, plastics, glass bottles, and synthetic fibre* (except commodities in bulk, in tank vehicles), and (b) *materials, equipment, and supplies* used in the manufacture and sale of drugs and toilet preparations, (except commodities in bulk, in tank vehicles), between points in CT, DE, KS, IL, IN, MD, MA, ME, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, and (2) *emulsifiers*, in bulk, in tank vehicles, (a) between the points named in (1) above and (b) from Philadelphia, PA, to Rensselaer, NY, restricted in (1) and (2) above to a service to be performed under contract(s) with Sterling Drug, Inc., of New York, NY. (Hearing site: New York, NY, or Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 133189 (Sub-18F), filed November 14, 1978. Applicant: VANT TRANSFER, INC., 5075 Northeast Mulcare Drive, Minneapolis, MN 55421. Representative: John B. Van de North, Jr., 2200 First National Bank Building, Saint Paul, MN 55101. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *iron and steel articles*, from the facilities of Simcote, Inc., at Newport, MN, to points in the United

States (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 133655 (Sub-131F), filed November 13, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 21300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *meats, meat products and meat by-products, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in AL, AZ, AR, CA, CO, FL, ID, IA, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, and WY, restricted to the transportation of traffic originating at the named origin. (Hearing site: Wichita, KS.)

MC 133689 (Sub-237F), filed November 13, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *drugs, shampoo, soap, and toilet articles*, in vehicles equipped with mechanical refrigeration, from the facilities of Westwood Pharmaceuticals, Inc., at or near Buffalo, NY, to points in IL, restricted to the transportation of traffic originating at the named origin facilities, and destined to the named destination. (Hearing site: St. Paul, MN.)

MC 133689 (Sub-244F), filed November 17, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *abrasives*, (except in bulk), from Tonawanda, NY, to points in IL, MI, MN, and WI (Hearing site: St. Paul, MN.)

MC 133796 (Sub-52F), filed October 9, 1978. Applicant: GEORGE APPEL TRUCKING, INC., 249 Carverton Road, Trucksville, PA 18708. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) *such commodities* as are dealt in by retail grocery stores, and (2) *commodities*, the transportation of which is otherwise exempt from economic regulation under Section 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act), in

mixed loads, with the commodities in (1) above, from points in the United States (except AK and HI), to Sunbury, Northumberland, and Milton, PA. (Hearing site: Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 134645 (Sub-28F), filed November 22, 1978. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue, South, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Huron Dressed Beef, Inc., at Huron, SD, to points in AZ, CA, and NV, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: St. Paul, MN.)

NOTE.—Dual operations are involved in this proceeding.

MC 134701 (Sub-5F), filed October 16, 1978. Applicant: J-V, INC., 11923 Pineridge Road, Sandy, UT 84070. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting *fertilizer*, in bags, from the port of entry on the International Boundary line between the United States and Canada, located at Sweetgrass, MT, to points in Los Angeles, San Francisco, Fresno, Placer, Sacramento, Nevada, King, Tulare, Kern, Orange, Ventura, Riverside, San Bernardino, Imperial, and San Diego Counties, CA, and Maricopa, Pima, Yuma, Pinal, Santa Cruz, and Yavapai Counties, AZ, under continuing contract(s) with Sherritt Gordon Mines, Ltd., of Ft. Saskatchewan, Alberta, Canada, restricted to the transportation of traffic originating at points in the Province of Alberta, Canada. CONDITION: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Washington, DC, or Salt Lake City, UT.)

NOTE.—The restriction and condition contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 8, 1974 and supplemented on

November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect.

MC 134945 (Sub-2F), filed November 8, 1978. Applicant: WESTERN TRANSFER & STORAGE, INC., 902 Avenue N, Grand Prairie, TX 75050. Representative: John G. Hardeman, 618 United American Bank Building, Nashville, TN 37219. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting (1) *uncrated copy machines, word processing machines, and (2) materials and supplies* used in the manufacture, installation, and sale of the commodities in (1) above, between Nashville, TN, on the one hand, and, on the other points in GA and KY, under continuing contract(s) with Xerox Corporation, of Atlanta GA. (Hearing site: Nashville, TN.)

MC 135218 (Sub-3F), filed November 9, 1978. Applicant: MONTI MOVING & STORAGE, INC., 925 Bergen Street, Brooklyn, NY 11238. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *used household goods*, between points in FL (except those in Jefferson, Leon, Wakulla, Gadsden, Liberty, Franklin, Jackson, Calhoun, Gulf, Holmes, Washington, Bay, Walton, Okaloosa, Santa Rosa, and Escambia Counties), restricted to the transportation of traffic having a prior or subsequent movement beyond the points authorized, and further restricted to the performance of a pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, or decontainerization of such traffic. (Hearing site: New York, NY.)

MC 135812 (Sub-1F), filed September 6, 1978, previously published in the FEDERAL REGISTER issue of October 19, 1978 as MC 145349F. Applicant: PROFESSIONAL DRIVER SERVICES, INC., 1631 Lebanon Road, Nashville, TN 37210. Representative: John M. Nader, Sixteenth Floor, Citizens Plaza, Louisville, KY 40202. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *new trucks and new truck chassis*, (1) in initial movements, in driveway service, (a) from Buffalo, NY, Hayward, CA, and Allentown, PA, to points in AL, FL, GA, IN, KY, LA, ME,

MA, MO, NH, NY, NC, OH, PA, SC, TN, TX, and VA, (b) from Chino, CA, Seattle, WA, Indianapolis, IN, and Portland, OR, to Nashville and Knoxville, TN, and (2) in driveway service, from Nashville and Knoxville, TN, to those points in the United States in and east of WI, IL, MO, AR, and LA. CONDITION: The prior or coincidental cancellation, at carrier's written request, of its authority under MC-140245. (Hearing site: Nashville, TN.)

NOTE.—This republication shows the correct docket number assigned to this proceeding as MC-135812 Sub 1F, the additional destinations of ME, MA, NH, NY, and PA in part (1)(a) above, and a change in the representative's address.

MC 136315 (Sub-44F), filed November 15, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) *Roofing and roofing materials, and (2) materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), (a) between the facilities of Masonite Corporation, Roofing Division, at or near Meridian, MS, and points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MO, OK, TN, and TX, and (b) between the facilities of Masonite Corporation, Roofing Division, at or near Little Rock, AR, and points in AL, FL, GA, KY, LA, MS, NC, SC, TN, TX, and VA, restricted in both (1) and (2) above to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Jackson, MS.)

NOTE.—Dual operations are involved in this proceeding.

MC 136511 (Sub-28F), filed October 18, 1978. Applicant: VIRGINIA APPALACHIAN LUMBER CORP., 9640 Timberlake Road, Lynchburg, VA 24502. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *new furniture, furniture parts, and clocks*, from points in VA and NC, to points in TX, OK, and LA. CONDITION: Taking official notice of the decision in MC 136511 Sub 7, served July 13, 1978, applicant must submit written evidence in the form of a verified statement demonstrating that it is fit, willing, and able to perform the service granted in this proceeding (Hearing site: Greensboro or Charlotte, NC.)

MC 138076 (Sub-8F), filed October 11, 1978. Applicant: HEAVY HAULING, INC., 1100 West Grand, Salina,

KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *reciprocal engines, reciprocal engine parts, turbine engines, turbine engine parts, castings, steel plates, and shafting*, between the facilities of Exline, Inc., at or near Salina, KS, on the one hand, and, on the other, points in AZ, CA, ID, and MT. (Hearing site: Kansas City, MO.)

MC 138237 (Sub-6F), filed September 11, 1978. Applicant: METRO HAULING, INC., 20848-77th Avenue South, Kent, WA 98031. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) *aluminum ingots and aluminum cable, and (2) materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between (a) the facilities of Reynolds Metals Company, at or near Troutdale, OR, on the one hand, and, on the other, points in WA, and (b) the facilities of Reynolds Metals Company, at or near Longview, WA, on the one hand, and, on the other, points in OR. (Hearing site: Seattle, WA, or Portland, OR.)

MC 138635 (Sub-68F), filed November 14, 1978. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW., Washington, DC 20005. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CA, on the one hand, and, on the other, points in OR, WA, and ID, restricted to the transportation of traffic moving on freight forwarder bills of lading. (Hearing site: Los Angeles, CA.)

NOTES.—Dual operations are involved in this proceeding.

MC 138882 (Sub-167F), filed October 18, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *office furniture*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of office furniture (except commodities in bulk), between Ossining, NY, on the one hand, and, on the other, points in the United States (except AK and HI).



(Hearing site: New York, NY, or Montgomery, AL.)

MC 139973 (Sub-54F), filed October 30, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO. 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) electrical appliances, (2) equipment and parts for electrical appliances, and (3) poleline hardware, from Washington, MO, to those points in the United States in and west of MT, WY, CO, and NM, (except AK and HI). (Hearing site: St. Louis, MO.)

NOTE.—Dual operations are involved in this proceeding.

MC 139973 (Sub-55F), filed October 31, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) electrical appliances, (2) equipment and parts for electrical appliances, and (3) poleline hardware, from Centralia, MO, to those points in the United States in and west of MT, WY, CO, and NM, (except AK and HI). (Hearing site: St. Louis, MO.)

NOTE.—Dual operations are involved in this proceeding.

MC 140241 (Sub-31F), filed October 13, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) pipe, fittings, valves, and hydrants, and (2) accessories for the commodities named (1) above, from the facilities of the Clow Corporation, at Columbia, MO, to points in ND, SD, NE, KS, OK, TX, LA, AR, MO, IA, MN, WI, IL, MI, IN, OH, KY, TN, AL, MS, GA, FL, SC, NC, VA, and WV, restricted in (1) and (2) above against the transportation of oil field commodities as defined in *Mercer Extension Oil Field Commodities*, 74, M.C.C. 459, and commodities in bulk. (Hearing site: Kansas City, MO.)

MC 140549 (Sub-12F), filed November 14, 1978. Applicant: FRITZ TRUCKING, INC., East Hwy 7, Clara City, MN 56222. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a common carrier, by motor vehicle, over irregular routes, transporting animal and poultry feed, from Gluek, New Richland, and Minneapolis, MN, to points in MT. (Hearing site: Minneapolis, MN.)

NOTE.—Dual operations are involved in this proceeding.

MC 140635 (Sub-14F), filed November 9, 1978. Applicant: ADAMS LINES, INC., 2619 North Street, Omaha, NE 68107. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. To operate as a common carrier, by motor vehicle, over irregular routes, transporting meats, meat products and meat by products, and articles distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in the United States in and east of ND, SD, NE, MO, OK, and TX, restricted to the transportation of traffic originating at the named origin. (Hearing site: Wichita, KS.)

NOTE.—Dual operations are involved in this proceeding.

MC 140829 (Sub-149F), filed November 17, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a common carrier, by motor vehicle, over irregular routes, transporting battery acids, brake fluids, gasoline antifreeze, windshield washer solutions, and lacquer, except commodities in bulk, from the facilities of Scholle Corp., (1) at or near Garland, TX, to points in AR, CO, LA, NM, and OK, and (2) at or near Raytown, MO, to points in CO, KS (except the facilities of General Battery Corp. at Salina, KS), NE, and IA, restricted in (1) and (2) above, to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Washington, D.C.)

NOTE.—Dual operations are involved in this proceeding.

MC 140829 (Sub-150F), filed November 17, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a common carrier, by motor vehicle, over irregular routes, transporting cereals (except in bulk, in tank vehicles), from Omaha, NE, to points in FL, GA, MA, MN, NJ, NY, NC, OH, PA, and SC. (Hearing site: Washington, D.C.)

NOTE.—Dual operations are involved in this proceeding.

MC 140829 (Sub-151F), filed November 17, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206,

Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a common carrier, by motor vehicle, over irregular routes, transporting malt beverages, from Chicago, IL, New Ulm, MN, and Pittsburgh, PA, to Oklahoma City, OK. (Hearing site: Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 140880 (Sub-3F), filed September 14, 1978. Applicant: HUGH J. RITCHIE AND GEORGE KROCOS, d.b.a. TRUCKIT, 6463 East Canning Street, Los Angeles, CA 90040. Representative: Hugh J. Ritchie, 3200 Wilshire Boulevard, Suite 809, Los Angeles, CA 90010. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting foundry compounds and foundry supplies (except commodities in bulk), (1) from Cleveland, OH, to City of Commerce, CA, and (2) from points in IL, MI, MO, NJ, NY, OH, and PA, to points in CA, ID, OR, and WA, under continuing contract(s) with Ashland Chemical Company, of Columbus, OH, and Robert A. Barnes, Inc., of Seattle, WA. (Hearing site: Los Angeles, CA.)

MC 14138 (Sub-14F), filed November 15, 1978. Applicant: STEVE SCHRANZ TRUCKING, INC., 350 Honeysuckle Lane, Belleville, IL 62221. Representative: Ernest A. Brooks, II, 1301 Ambassador Building, 411 North 7th Street, St. Louis, MO 63101. To operate as a common carrier, by motor vehicle, over irregular routes, transporting dry soybean meal, in bulk, in dump vehicles, from the facilities of Ralston Purina Company, at Memphis, TN, to Circleville, OH. (Hearing site: Memphis, TN.)

MC 141167 (Sub-5F), filed September 29, 1978. Applicant: LANGDON TRANSPORTATION, INC., 14625 Carmenita, Suite 200, Los Angeles, CA 90650. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting such commodities as are dealt in by a retail department stores, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (a) from points in AL, AR, CO, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VT, VA, WV, WI, TX, and UT, to points in AZ, CA, ID, MT, NV, NM, OR, WA, WY, TX, and UT, and (b) from points in CA, to points in AZ, ID, MT, NV, NM, OR, WA, WY, TX, and UT, under continuing contract(s) with Rasco Stores, Division of Gamble-Skogmo, Inc., of Burbank, CA. (Hearing site: Los Angeles, CA.)

MC 141266 (Sub-6F), filed October 10, 1978. Applicant: WILLIAM T. AMERSON, d.b.a. BILL AMERSON TRUCKING, Route 1, Box 305, Georgetown, SC 29440. Representative: Mitchell King, Jr., P.O. Box 1628, Greenville, SC 29602. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting lumber and lumber products, from the facilities of Charles Ingram Lumber Company, at or near Andrews and Florence, SC, to points in AL, DE, FL, GA, KY, MD, MS, NC, NJ, OH, PA, TN, VA, WV, and DC, under continuing contract(s) with Charles Ingram Lumber Company, of Florence, SC. (Hearing site: Columbia, SC.)

MC 141532 (Sub-35F), filed October 18, 1978. Applicant: PACIFIC STATES TRANSPORT, INC., 35433 16th Avenue South, Federal Way, WA 98003. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. To operate as a common carrier, by motor vehicle, over irregular routes, transporting machinery, construction materials, and construction equipment, between points in CA in and south of San Bernardino, Kern, and San Luis Obispo Counties, on the one hand, and, on the other, points in OR in and south of Lane, Deschutes, Crook, Grant, and Baker Counties. (Hearing site: Los Angeles, CA.)

MC 141776 (Sub-34F), filed October 12, 1978. Applicant: FOODTRAIN INC., Spring and South Center Streets, Ringtown, PA 17967. Representative: Pauline E. Myers, Suite 407 Walker Building, 734 15th Street, NW., Washington, DC 20005. To operate as a common carrier, by motor vehicle, over irregular routes, transporting confectionery and cough drops, in vehicles equipped with mechanical refrigeration, from the facilities of Ludens, Inc., at Reading, PA, to points in IL, IN, KY, MI, MN, MO, OH, WI, and WV. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 141804 (Sub-146F), filed October 16, 1978. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a common carrier, by motor vehicle, over irregular routes, transporting materials used in the production of plastic pipe and of plastic fittings, (except commodities in bulk), from Louisville, KY, Neal, WV, and Avon Lake, OH to Bakersfield, Santa Ana, and Sun Valley, CA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142515 (Sub-1F), filed November 2, 1978. Applicant: S. T. TURNER TRUCKING, INC., R.R. No. 1 Box 444, Nashville, IN 47448. Representative: Terry G. Fewell, P.O. Box 4403,

Chicago, IL 60680. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting (1) automotive and truck parts, and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (1) above, from the facilities of Arvin Industries, Inc., at or near Monroeville, AL, to the facilities of Arvin Industries, Inc., at or near Indianapolis, IN, under, continuing contract(s) with Arvin Automotive, of Columbus, IN. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 142559 (Sub-69F), filed November 17, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) rubber articles, plastic articles, and rubber and plastic articles, and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Entek Corporation of America, at or near Irving, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Columbus, OH, or Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 142715 (Sub-220), filed November 8, 1978. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: Andrew R. Clark, 1000 First National Bank, Minneapolis, MN 55402. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) paper, paper products, cellulose products, and textile softeners, and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (1) above, between Green Bay, WI, on the one hand, and, on the other points in ND, SD, NE, KS, OK, TX, MN, IA, MO, AR, LA, MI, IL, IN, KY, TN, MS, AL, GA, OH, and NC. (Hearing site: Cincinnati, OH.)

MC 143255 (Sub-1F), filed November 13, 1978. Applicant: R & D TRANSPORTATION CORP., P.O. Box 1908, Des Moines, IA 50306. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. To operate as a contract carrier, by motor vehicle, over irregular routes, transporting such commodities as are dealt in or used by distributors of lumber, lumber products, and building materials (except commodities in bulk), from points in LA, MS, AL, AR, MO, CA, OR, WA, ID, MT, TX, IL, IN, MI, WI, and MN, to points in IN, KS, NE, SD, ND, MN, IL, MO, WI, IA, OH, KY,

OK, CO, and MI, under continuing contract(s) with Roberts & Dybdahl Inc., of Des Moines, IA. (Hearing site: Chicago, IL, or Des Moines, IA.)

MC 143328 (Sub-12F), filed November 14, 1978. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20423. To operate as a common carrier, by motor vehicle, over irregular routes, transporting such commodities as are dealt in or used by breweries, between points in Jefferson County, CO, on the one hand, and, on the other, points in MT and WA. (Hearing site: Denver, CO.)

NOTE.—Dual operations are involved in this proceeding.

MC 143328 (Sub-13F), filed November 14, 1978. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20423. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) malt beverages, from Seattle, WA, to points in UT; and (2) malt beverage containers, from points in UT to Seattle, WA. (Hearing site: Seattle, WA.)

NOTE.—Dual operations are involved in this proceeding.

MC 143328 (Sub-14F), filed November 17, 1978. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20423. To operate as a common carrier, by motor vehicle, over irregular routes, transporting (1) malt beverages, from St. Paul, MN, and LaCrosse, WI, to points in MT, CA, and WA, and (2) malt beverage containers, from points in MT, CA, and WA, to St. Paul, MN, and LaCrosse, WI. (Hearing site: Minneapolis, MN.)

NOTE.—Dual operations are involved in this proceeding.

MC 143328 (Sub-15F), filed November 3, 1978. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20036. To operate as a common carrier, by motor vehicle, over irregular routes, transporting such commodities as are dealt in by grocery stores, food business houses, and food service houses, from points in CA, OR, and WA, to points in MT. (Hearing site: San Francisco, CA.)

NOTE.—Dual operations are involved in this proceeding.



MC 143471 (Sub-7F), filed October 16, 1978. Applicant: SHERIDAN HEIGHTS, INC. d.b.a. DAKOTA PACIFIC TRANSPORT, 301 Mt. Rushmore Road, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *acrylic bathroom fixtures*, from Rapid City, SD, to points in AR, CA, CO, ID, IA, IL, KS, MN, MO, MT, NE, NV, ND, OK, OR, SD, UT, WA, WI, and WY, under continuing contract(s) with Royal Acrylic Manufacturing Co., Inc., of Rapid City, SD. (Hearing site: Rapid City or Pierre, SD.)

MC 143621 (Sub-4F), filed October 17, 1978. Applicant: TENNESSEE STEEL HAULERS, INC., 403 Maplewood Avenue, Nashville, TN 37210. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *lumber, lumber products, and wood products*, (1) from Nashville, TN, to points in AL, KY, MS, NC, VA, and WV, and (2) between points in TN and GA. (Hearing site: Nashville, TN.)

MC 144330 (Sub-4F), filed October 3, 1978. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freepoint Center, Clearfield, UT 84016. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *cereal binders, ceiling compounds, industrial flour, industrial starches, and grain products*, from McPherson, KS, to points in UT, NV, WA, OR, CA, AZ, ID, MT, WY, CO, and NM. (Hearing site: Salt Lake City, UT, or Kansas City, KS.)

MC 144781 (Sub-2F), filed October 16, 1978. Applicant: GIDEON FARMER, d.b.a. FARMER TRUCKING CO., Monsanto Road, Columbia, TN 38401. Representative: Edward C. Blank II, Middle Tennessee Bank Building, P.O. Box 1004, Columbia, TN 38401. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *phosphate bearing materials*, in dump vehicles, from the facilities of Monsants Company in Limestone County, AL, to Prospect, TN, restricted to the transportation of traffic having a subsequent movement by rail. (Hearing site: Columbia or Pulaski, TN.)

MC 144827 (Sub-8F), filed October 10, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, P.O. Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting cel-

lulose film, plastic film, and paper film, (except commodities in bulk), from Grand Prairie, TX, to points in AZ, CA, NM, OR, and WA. (Hearing site: Dallas, TX.)

MC 144838 (Sub-1F), filed November 14, 1978. Applicant: ARDIS L. KEMP and BRENDA VASQUEZ, d.b.a. ABCO TRUCKING, a partnership, 1818 West Adams, West Covina, CA 91791. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) *plastic film and plastic sheeting*, from City of Industry, CA, to points in AZ, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plastic film and plastic sheeting (except commodities in bulk), from Gloucester, MA, and points in LA and TX, to City of Industry, CA, all of the service in (1) and (2) above to be performed under continuing contract(s) with B & K Industry Plastics, of City of Industry, CA. (Hearing site: Los Angeles, CA.)

MC 144912 (Sub-1F), filed October 16, 1978. Applicant: LEON R. GOLD-SMITH, d.b.a. TERMINAL MOTOR EXPRESS, 1711 East 15th Street, Los Angeles, CA 90021. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *foodstuffs*, in mixed loads with commodities the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act), and (2) *commodities* the transportation of which is otherwise exempt from economic regulation under the statutory provisions in (1) above, in mixed loads with foodstuffs, from Parsippany, NJ, New York, NY, and points in VA, NC, and GA, to points in CA and UT. (Hearing site: Los Angeles, CA.)

MC 144969 (Sub-3F), filed November 14, 1978. Applicant: WHEATON CARTAGE CO., a corporation, Millville, NJ 08332. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *chemicals* used in the processing of cement and concrete, (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture, distribution and application of the commodities in (1) above, (except commodities in bulk), from the facilities of Nox-Crete Chemicals, Inc., at or near Baton Rouge, LA, to points in AL, AR, FL, GA, MS, OK, SC, TN, and TX, restricted to the transportation of

traffic originating at the named origin facilities. (Hearing site: Omaha, NE.)

NOTE.—Dual operations are involved in this proceeding.

MC 145054 (Sub-7F), filed October 16, 1978. Applicant: COORS TRANSPORTATION CO., a corporation, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80216. To operate as a *common carrier*, by motor vehicle, over irregular routes transporting *Cheese, cheese products, and synthetic cheeses*, from Logan, UT, to points in CO. (Hearing site: Denver, CO.)

NOTE.—Dual operations are involved in this proceeding.

MC 145149 (Sub-5F), filed October 6, 1978. Applicant: Matador Service, Inc., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Kansas Credit Union Building, Suite 110L, 1010 Tyler, Topeka, KS 66612. To operate as a *common carrier*, by motor vehicle, over irregular routes transporting *anhydrous ammonia*, in bulk, from the facilities of Chevron Chemical Company, near Friend, KS, to points in CO, NE, OK, TX, and WY. (Hearing site: Kansas City, MO.)

MC 145243 (Sub-1F), filed October 30, 1978. Applicant: REDBIRD DEVELOPMENT, INC., 1018 Whitlock Road, Rochester, NY 14609. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. To operate as a *contract carrier*, by motor vehicle, over irregular routes transporting *Scrap metal*, between points in CT, IL, IN, MA, ME, MI, NH, NJ, NY, OH, PA, and VT, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada at points in VT, NE, ME, and NY, under continuing contract(s) with Intermetco Limited, of Hamilton, Ontario, restricted to the transportation of traffic destined to Lapraire, Quebec, Canada. (Hearing site: Buffalo or Syracuse, NY.)

NOTE.—The restriction contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the Federal Register on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the provinces of Alberta, Saskatchewan, and Manitoba regarding this issue. If the policy statement is changed appropriate notice will appear in the Federal Register and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 145492F, filed October 13, 1978. Applicant: RICCONI CORP., 130 Cedar Grove Road, Somerville, NJ 08876. Representative: Martin M. Geffon, 155 Canterbury Road, Mt. Laurel, NJ 08054. To operate as a *contract carrier*, by motor vehicle, over irregular routes transporting (1) *plastic articles* (except foam, cellular, and expanded), and (2) *materials, supplies, and equipment* used in the manufacture of the commodities in (1) above, from Nashua, NH and Sloatsburg, NY, to points in MA, NY, PA, NJ, DE, CT, NH, MD, and DC, and from points in MA, NY, PA, NJ, DE, CT, NH, MD, and DC, to Nashua, NH and Sloatsburg, NY, all of the service in (1) and (2) above to be performed under continuing contracts with Brockway Glass Company, Inc., of Brockway, PA. (Hearing site: New York, NY.)

MC 145588 (Sub-2F), filed November 13, 1978. Applicant: GULF-MIDWEST-ERN, INC., a Texas corporation, 12151 West 44th Avenue, Denver, CO 80033. Representative: William W. Selman, 18500 John F. Kennedy Boulevard, Houston, TX 77205. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs and canned goods* from the facilities of Skyland Food Corporation, at or near Delta, CO, to points in AZ, CA, IL, IA, KS, NE, OK, NM, MO, TX, and UT. (Hearing site: Denver, CO, or Omaha, NE.)

MC 145588 (Sub-4F), filed November 16, 1978. Applicant: GULF MIDWESTERN, INC., a Texas corporation, 12151 West 44th Avenue, Denver, CO 80033. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *clay products, glassware, chinaware, pottery, stoneware, plastic products, and metal products*, from Houston, TX, and Humboldt, KS, to points in the United States (except AK and HI). (Hearing site: Denver, CO.)

MC 145625 (Sub-1F), filed November 13, 1978. Applicant: DUTCHLAND TRUCKING, INC., 1051 Center Avenue, Oostburg, WI 53070. Representative: Nancy J. Johnson, 4506 Regent Street, Suite 100, Madison, WI 53705. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *cheese and cheese products*, from points in Fond du Lac and Sheboygan Counties, WI, to points in NE, KS, OK, TX, and MO, and (2)(a) *cheese and cheese products*, and (b) *butter*, in mixed loads with cheese and cheese products, from points in Oconto County, WI, to points in NE, KS, OK, TX, and MO. (Hearing site: Milwaukee, WI, or Madison, WI.)

MC 145633F, Filed October 27, 1978. Applicant: WALTER B. MAKI, d.b.a.

MAKI INTERNATIONAL & CO., Building No. 62, Office Suite 6, Port Everglades Station, Ft. Lauderdale, FL 33316. Representative: Gerard J. Donovan, 4791 S.W. 82nd Avenue, Davie, FL 33328. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Dade, Broward, and Palm Beach Counties, FL, restricted to the transportation of traffic having a prior or subsequent movement by water or air. (Hearing site: Washington, DC, or Miami, FL.)

MC 145675 (Sub-2F), filed November 22, 1978. Applicant: L. C. WASHBURN AND GARY WASHBURN, a partnership d.b.a. WASHBURN TRUCKING CO., Route 3, Box 209, Boaz, AL 35957. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *lumber*, from the facilities of East Highlands Company, Forest Products Division, at or near Albertville, AL, to points in GA, KY, TN, IN, OH, and IL. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 145705F, filed November 13, 1978. Applicant: ARTHUR MAUST, 1026 Bay Port Road, Bay Port, MI 48720. Representative: James R. Davis, 1018 Michigan National Tower, Lansing, MI 48933. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *oyster shells*, from Baltimore, MD, and Mobile, AL, to points in MI, and (2) *calcium carbonate*, from Green Castle, IN, to points in MI. (Hearing site: Lansing or Detroit, MI.)

MC 145715 (Sub-1F), filed November 14, 1978. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Road, Van Buren, AR 72956. Representative: Bernard J. Kompare, Suite 1600, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities used by John Morrell & Co., at Fort Smith, AR, to points in FL, GA, IL, IN, KY, MI, MN, MS, MO, NJ, NY, OH, PA, TN, and WI, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Chicago, IL.)

MC 145749F, filed November 13, 1978. Applicant: HALL'S INC., Low Moor, IA 52757. Representative: Carl E. Munson, 469 Fisher Building, DuBuque, IA 52001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *iron and steel articles*, between the facilities of Central Steel Tube Co., at or near Clinton, IA, on the one hand, and, on the other, points in IL, IN, KY, MI, MO, and OH, under continuing contract(s) with Central Steel Tube Co., of Clinton, IA. (Hearing site: Chicago, IL, or Des Moines, IA.)

NOTE.—Dual operations are involved in this proceeding.

MC 145765F, filed November 20, 1978. Applicant: WIEST TRUCK-LINE, INC., 1305 Sixth Avenue S.W., Jamestown, ND 58401. Representative: James B. Hovland, P.O. Box 1680, 414 Gate City Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *prefabricated metal buildings*, and (2) *parts and accessories* for the commodities in (1) above, from Jamestown, ND, to points in WY, NE, CO, UT, NM, AZ, ID, and NV. (Hearing site: Fargo, ND, or Denver, CO.)

NOTE.—Dual operations are involved in this proceeding.

MC 145778F, filed November 8, 1978. Applicant: ROGER WHITMORE, d.b.a. WHITMORE'S 66 SERVICE, Route 173 and Lewis Avenue, Zion, IL 60099. Representative: John R. Goshgarian, 218 North County Street, Waukegan, IL 60085. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *wrecked and disabled automobiles*, from points in Kenosha County, WI, to points in Lake County, IL. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 130339 (Sub-1F), filed November 13, 1978. Applicant: TRIPS UNLIMITED, INC., 2512 S. 98th Avenue, Omaha, NE 68124. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To engage in operations, in interstate or foreign commerce, as a *broker*, at Omaha, NE, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in round-trip special and charter operations, beginning and ending at points in IA, KS, MN, MO, NE, OK, and SD, and extending to points in AZ, CO, NM, TX, UT, and WY. Condition: Prior or coincidental cancellation, at applicant's written request, of its authority in MC-130399, issued August 19, 1978. (Hearing site: Omaha, NE.)

[FR Doc. 78-36192 Filed 12-27-78; 8:45 am]



[7035-01-M]

[Exception under Section (a), Paragraph (1), Part (v), Second Revised Service Order No. 1332]

## RAILROAD SERVICE BOARD

Exception No. 9

Decided: December 15, 1978.

To: The Atchison, Topeka and Santa Fe Railway Company.

By the Board:

Because of weather problems, The Atchison, Topeka and Santa Fe Railway Company (ATSF), is temporarily unable to move all cars within 60 hours as required by the provisions of Second Revised Service Order No. 1332.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(v) of Second Revised Service Order No. 1332, the ATSF is required to move all cars from the points named below within 72 hours:

## ATSF

Belen, New Mexico  
Carlsbad, New Mexico  
Clovis, New Mexico

Effective December 15, 1978.

Expires 11:59 p.m., December 20, 1978.

JOEL E. BURNS,  
Chairman, Railroad  
Service Board<sup>1</sup>

[FR Doc. 78-36190 Filed 12-27-78; 8:45 am]

[7035-01-M]

## REVISED POLICY CONCERNING APPLICATIONS FOR OPERATING AUTHORITY TO HANDLE TRAFFIC TO AND FROM POINTS IN CANADA

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement published in the FEDERAL REGISTER issue of December 5, 1974 (39 FR 42440) and supplemented in the issue of November 18, 1975 (40 FR 53480) revised.

SUMMARY: (1) With respect to applications relating to traffic moving to or from points in Canada, the Commission will no longer restrict grants of authority to specific Canadian destinations or origins, or designate specific port of entry points which must be used.

(2) Carriers protesting applications for traffic moving to or from Canadian points are not required to show that they possess the necessary Canadian authority but are expected to comply with the requirements in Ex Parte No. 55 (Sub-No. 26), *Protest Standards in Motor Carrier Application Proceedings*, decided October 10, 1978.

<sup>1</sup>Members Joel E. Burns, Robert S. Turkington and John R. Michael.

(3) Applicants no longer need submit copies of Canadian authority and the Commission will not require a showing of complementary Canadian authority prior to the issuance of a certificate.

In order to minimize the difficulties in crossing borders to meet international transportation needs and improve the commerce of the United States and Canada, the Interstate Commerce Commission has acted to introduce needed flexibility to motor carrier licensing proceedings.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, (202) 275-7292.

## SUPPLEMENTARY INFORMATION:

With respect to applications relating to traffic moving to or from points in Canada, the Commission will no longer restrict grants of authority to specific Canadian destinations or origins, or designate specific port of entry points which must be used. We no longer find it necessary to impose such restrictions. We feel the elimination of those restrictions will stimulate expanded competition among carriers and facilitate the free flow of international commerce. New certificates deleting the restrictions imposed pursuant to the prior policy (those issued pursuant to applications filed subsequent to March 3, 1975) will not be issued. Instead, those restrictions will be considered null and void and will be given no force or effect.

Carriers holding authorities issued prior to the effective date of the earlier policy statement are reminded that similar restrictions contained in their authorities are still valid and enforceable.

Inasmuch as the Commission's decision in Ex Parte No. 55 (Sub-No. 26), *Protest Standards in Motor Carrier Application Proceedings*, decided October 16, 1978, places additional requirements on protestants to all proceedings, part (2) of the prior policy statement is rendered moot. No supplementary requirements will be imposed on protestants to applications seeking to transport traffic to or from points in Canada. However, carriers are reminded that the requirements of *Protest Standards* do apply to traffic moving to or from points in Canada.

Finally, the requirement that carriers submit copies of complementary Canadian authority before a certificate of permit will be issued by this Commission has been eliminated. In all future proceedings, once a need has been demonstrated for the proposed service appropriate authority will be granted. Commission decisions are based upon evidence of need submitted in support of the application. The issue of whether the applicant holds

complementary Canadian authority is not determinative of the issues before this Commission. Furthermore, the withholding of a certificate or permit for a showing of complementary Canadian authority causes unnecessary delay. Future decisions will not be conditioned on a showing of complementary Canadian authority.

All carriers now holding grants of authority conditioned solely on a showing of complementary Canadian authority should inform the Commission in writing<sup>1</sup> and request immediate issuance of their certificates or permits. Correspondence must contain reference to this policy statement and indicate that compliance has been made with all standard Commission requirements.

This notice is promulgated under the authority contained in 49 U.S.C. § 11101 (formerly section 204 of the Interstate Commerce Act) and 5 U.S.C. § 553. It supersedes the prior policy statement published in the FEDERAL REGISTER on December 5, 1974, (39 FR 42440) and supplemented November 18, 1975 (40 FR 53480).

Dated December 14, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Gresham, and Clapp. Commissioner Stafford dissenting.

H. G. HOMME, Jr.,  
Secretary.

Commissioner Stafford, dissenting:  
I would reject the proposed revision.

I am concerned that the manner in which we are changing the outstanding policy statement may be legally indefensible. My reservations are two-fold. To begin with, we have consulted only members of this Commission and a few officials of the Canadian government. Although the present record indicates little opposition to eliminating the foreign origin and destination restrictions, we are changing our policy without getting views from shippers, carriers, and the general public. I think this is wrong, and that some form of public input is worthwhile before our minds are made up. This is especially true in view of the recent court decision in *National Tour Brokers Association v. United States*, No. 77-1501 (D.D.C., December 11, 1978).

Furthermore, the restriction removed by this policy statement was imposed because of an express or implicit finding in each case that the public convenience and necessity did not warrant a broader grant of authority. The limitation regarding foreign origins or destinations was not imposed arbitrarily. Rather, it is similar to an identifying origin or destination point in interstate operations. Since we do not have jurisdiction to authorize operation in a foreign country, these restrictions were devised to place traffic moving to or from Canada on a par with traffic moving in interstate commerce.

<sup>1</sup>Letters should be addressed to: Interstate Commerce Commission, Office of Proceedings, attention: Canadian Authority, Washington, D.C. 20423.

Elimination of these restrictions from outstanding certificates broadens the scope of authority, and cannot legally be effected without appropriate findings. At a minimum, general licensing would appear to be required. If rulemaking establishes public support for this proposal, I also would support it.

In addition, I see no reason for treating pre-1974 restrictions different from post-1974 restrictions. The 1974 Policy Statement merely formalized a Commission procedure that had been in effect for many years.

Regarding protests in these cases, I am not convinced that existing carriers actively participating in a joint line operation would be allowed to protest as a matter of right. If this were stated in the affirmative in the policy statement, I would have no objection to the second recommended change.

While the Catch-22 situation (regarding complementary authority) probably does exist, there are ways of eliminating the problem without eliminating the requirement. The Canadians seem to favor the requirement, and there is no good reason for abandoning it.

[FR Doc. 78-36189 Filed 12-27-78; 8:45 am]

[7035-01-M]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 235]

## IMPORTANT NOTICE

DECEMBER 18, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.



Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

#### MOTOR CARRIERS OF PROPERTY

MC 2368 (Sub-86 TA), filed November 14, 1978. Applicant: BRALLEY-WILLET TANK LINES, INC., P.O. BOX 495, Richmond, Va 23204. Representative: William T. Marshburn (same address as applicant). *Animal and vegetable oils and greases and products and by-products of animal and vegetable oils and greases*, in bulk, in tank vehicles between Linville, Va. on the one hand, and, on the other, Canton, Ga. and points in Ohio, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Jacob Stern & Sons Inc., 910 Benjamin Fox Pavilion, Jenkintown, PA 19046. Send protests to: Paul D. Collins, ICC, Rm. 10, 502 Federal Bldg., 8th & Marshall Street, Richmond, Va 23219.

MC 31389 (Sub-264 TA), filed November 16, 1978. Applicant: McLEAN TRUCKING CO., 6717 Waughtown Street, Winston-Salem, NC 27107. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Consolidated Thermoplastics Company, at or near Harrington and Camden-Wyoming, DE, as off-route points in conjunction with applicant's presently authorized regular-route operations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Consolidated Thermoplastics Company, P.O. Box 27, Harrington, DE 19952. Send protest to: Terrell Price, ICC, 800 Briar Creek Rd. Rm. CC516, Mart Office Bldg., Charlotte, NC 28205.

MC 40978 (Sub-49TA), filed November 14, 1978. Applicant: CHAIR CITY MOTOR EXPRESS CO., 3321 Business 141 South, Sheboygan, WI 53081. Representative: William C. Dineer, 710 North Plankinton Avenue, Milwaukee,

WI 53203. *Power lawn mowers and parts of power lawn mowers*, from Manawa, WI to points in MN, IA, MO, OK, AR, IL, KY, TN, MI, OH, PA, NY, WV, VA, NC, SC, GA, MD, DE, NJ, CT, MA, RI, and DC, for 180 days. SUPPORTING SHIPPER(S): Outboard Marine Corporation, 100 Sea Horse Drive, Waukegan, IL 60085. SEND PROTESTS TO: Gail Daugherty, ICC, U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 42828 (Sub-13TA), filed November 13, 1978. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine Street, Barre, VT 05641. Representative: William L. Rossi, (same as above). *Stone*, from Barre, VT and points within 15 miles of Barre, VT to points in OH, for 180 days. SUPPORTING SHIPPER(S): Cook, Watkins & Patch, Inc., Barre, VT 05641. Rouleau Granite Co., Inc., Metro Center, Barre, VT 05641. Ce-trangolo Finishing Works, 11 Main Street, Northfield, VT 05663. SEND PROTESTS TO: ICC, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 51146 (Sub-658TA), filed November 13, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. *Pillows* from the facilities of the Chemical Specialties Division, Hoover Universal, Inc. at or near Farwell, MI to Chicago, IL; Rocky Mount, NC; and Jersey City, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Chemical Specialties Division, Hoover Universal, Inc., Route No. 2, Tri Port Road, Georgetown, Ky 40324. Send protests to: Gail Daugherty, ICC, Bureau of Operations, U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-662TA), filed November 13, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. *Printed matter* from Des Moines, IA to points in OH, NY, MI, IL and WI, for 180 days. An underlying ETA seeks 90 days authority.

Supporting shipper: Meredith Printing, P.O. Box 1394, Des Moines, IA 50304 (Dwight Lammers). Send protests to: Gail Daugherty, Trans. Asst., ICC, U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 52460 (Sub-224 TA), filed October 17, 1978. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, Tulsa, OK 74107.

Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. (1) *Paper and paper products*, (except commodities in bulk), from the facilities of International Paper Co., at or near Pittsburg, KS., to points in the United States, and; (2) *Equipment, materials and supplies* used in the manufacture of distribution of paper and paper products, (except commodities in bulk), from points in the United States to the facilities of International Paper Co., at or near Pittsburg, KS., for 180 days. SUPPORTING SHIPPER(S): International Paper Company, 220 E. 42d Street, New York, NY 10017. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3d, Oklahoma City, OK 73102.

MC 55889 (Sub-49TA), filed October 17, 1978. Applicant: AAA COOPER TRANSPORTATION, P.O. Box 2207, Dothan, AL 36301. Representative: Kim D. Mann, 7101 Wisconsin Avenue, Suite 1010, Washington, DC 20014. Authority sought to operate as a common carrier, by motor vehicle, over regular and irregular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), *Regular routes*: Between Montgomery and Opp, AL over U.S. Highway 331, serving no intermediate points, but serving points in the commercial zones of Montgomery and Opp. *Irregular routes*: Between Birmingham, AL and points within 15 miles of Birmingham, on the one hand, and, on the other, Andalusia, Athens, Auburn, Brundidge, Citronelle, Clayton, Cullman, Decatur, Demopolis, Dothan, Elba, Enterprise, Eufaula, Eutaw, Fairhope, Fayette, Flomaton, Florala, Foley, Greensboro, Haleyville, Hartselle, Headland, Huntsville, Jasper, Linden, Luverne, Monroeville, Opp, Ozark, Robertsedale, Russellville, Samson, Stevenson, Troy, Tuscaloosa, Union Springs, Uniontown, AL, and points in their respective commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): There are approximately (91) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 55896 (Sub-102TA), filed November 16, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard

Road, Taylor, MI 48160. Representative: George E. Batty (same as above). *Chemicals and materials or supplies used in the manufacturing and packaging of chemicals*, between the facilities of the Dow Chemical Co., at or near Ludington, MI, on the one hand, and, on the other, points in IN, IL, OH, MI, WI and PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dow Chemical U.S.A.—Central Division, South Madison Street, Ludington, MI 49431. SEND PROTESTS TO: TIM Quinn, ICC, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Boulevard, Detroit, MI 48226.

MC 59367 (Sub-131TA), filed November 8, 1978. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Fort Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, from the plantsite of George A. Hormel & Co., at Fort Dodge, IA to points in CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. SEND PROTESTS TO: Herbert W. Allen, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 61396 (Sub-363TA), filed November 14, 1978. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer, (same as above). *Liquid feed and liquid feed supplements*, in bulk in tank vehicles, from Crete, NE to points in CA, NV, UT, OR, WA, ID, AR, TN, NC, VA, KY, IL, SD, IA, MN, KS, OK, TX, AZ, AL, MO, CO, NM, WY, FL, GA, SC, MS, LA, ND, and WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Feed Service Corp., Box 348, Crete, NE 68333. SEND PROTESTS TO: Carroll Russell, ICC, Suite 620, 110 No. 14th Street, Omaha, NE 68102.

MC 96607 (Sub-11TA), filed November 8, 1978. Applicant: RUCKER BROTHERS TRUCKING, INC., 1820 Stewart Street East, Tacoma, WA 98421. Representative: Michael D. Duppenhaler, 211 South Washington Street, Seattle, WA 98104. *Prefabricated sprinkler systems, pipe and pipe fittings, and contractor's equipment*, between points in MT, ID and the Seattle, WA Commercial Zone as defined by the Commission, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Stang Hydronics, Inc., 2339 Lincoln Ve., Tacoma, WA 98421. Grinnell Fire Protection Systems Company, Inc., 875 S.W. 7th St., P.O. Box 916, Renton, WA 98055. SEND PROTESTS



TO: Hugh H. Chaffee, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 103051 (Sub-460TA), filed November 20, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue, North, Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. *Liquid Sugar*, in bulk, in tank vehicles, from Chalmette and New Orleans, LA to AL, AR, TN, TX, FL, GA, IL, MS and MO, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Amstar Corporation, 7417 N. Peters St., Arabi, LA 70032. SEND PROTESTS TO: Joe J. Tate, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 105159 (Sub-37 TA), filed October 17, 1978. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main Street, Red Wing, MN 55066. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Feed and feed ingredients, grain, soybean and seed products and by-products*, (except commodities in bulk, in tank vehicles), from plant and storage facilities of Archer Daniels Midland Company, Red Wing, MN., to points in Colorado, Kansas, Nebraska, Missouri, South Dakota, North Dakota, Iowa, Wisconsin and IL., for 180 days. SUPPORTING SHIPPER(S): Archer Daniels Midland Company, P.O. Box 1470, Decatur, IL 62525. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114273 (Sub-483 TA), filed November 17, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). *General Commodities*, moving on Part IV Freight Forwarder Bill of Lading, (except those of unusual value, classes A and B explosives), household goods as defined by the Commission, commodities in bulk, in tank vehicles, and commodities which because of size or weight require special equipment from the facilities of Texas Shippers Association, Inc. (a Freight Forwarder) at Chicago, IL to Amarillo, Dallas, Ft. Worth, and Lubbock, TX. Restricted to traffic originating at the above named facility and destined to the named points for 180 days. SUPPORTING SHIPPER(S): Texas Shipper Association, Inc., 2311 Butler St., Dallas, TX 75235. SEND PROTESTS TO: Herbert W. Allen, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114273 (Sub-484 TA), filed November 17, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). *Such*

*merchandise as is dealt in by wholesale, retail, and chain grocery and feed business houses* between Clinton, Iowa, Davenport, Iowa, on the one hand, and points in the States of Indiana, Michigan, and Ohio on the other—Restricted to traffic originating at or destined to the facilities of Ralston Purina Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. SEND PROTESTS TO: Herbert W. Allen, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114569 (Sub-262 TA), filed November 16, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). (1) *Aluminum billets and extrusions; aluminum doors and windows, glazed and unglazed; fabricated metal products and hardware, accessories, and parts thereof when moving in connection therewith* (a) From the facilities of Capitol Products Corporation located at Kentland, IN to points in OH, WV, MI, KY, TN, MS, LA, AR, MO, IL, WI, MN, IA, ND, SD, WY, NE, CO, KS, OK, TX, and PA; and (b) From the facilities of Capitol Products Corporation located in Hampden Township, Cumberland County, PA to points in WV, KY, TN, MS, LA, AR, MO, MN, IA, ND, SD, WY, NE, CO, KS, OK, and TX; and (2)(a) *Aluminum scrap, glass in crates, aluminum hardware, vinyl plastics, and fluxing materials* from the points in destination states named in 1(b) above to the facilities of Capitol Products Corporation in Hampden Township, Cumberland County, PA; and (b) *Glass in crates, aluminum hardware and vinyl plastics* from points in WV, KY, TN, MS, LA, AR, MO, MN, IA, ND, SD, WY, NE, CO, KS, OK, and TX to the facilities of Capitol Products Corporation at Kentland, IN. Restricted to traffic originating at and terminating at the facilities of Capitol Products Corporation in Hampden Township, Cumberland, PA and Kentland, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Capitol Products Corp., P.O. Box 69, Mechanicsburg, PA 17055. Send protests to: Charles F. Myers, ICC, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 115841 (Sub-654 TA), filed November 8, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (Same). *Petroleum and petroleum products* (except in bulk) from the facilities of Texaco, Inc. at Jefferson County, TX to points in MI, IL,

IN, OH, WV, KY, TN, AL, SC, NC, VA and points in PA West to U.S. Hwy. 11 and points in NY West of U.S. Hwy. 11, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Texaco, Inc., P.O. Box 52332, Houston, TX 77052. Send protests to: Glenda Kuss, ICC, Suite A-422—U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 116645 (Sub-25 TA), filed November 17, 1978. Applicant: DAVIS TRANSPORT CO., P.O. Box 56, Gilcrest, CO 80623. Representative: Leslie R. Kehl, 1660 Lincoln Street, Suite 1600, Denver, CO 80264. *Liquid feed ingredients, in bulk, in tank vehicles*: From the facilities of Cargill Inc. at Sterling CO to points in KS, NE, OK, SD, TX and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cargill, Inc., Box 9300, Minneapolis, MN 55440. Send protests to: Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 116763 (Sub-456 TA), filed November 20, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). (1) *Such merchandise as dealt in by discount and variety stores* (except foodstuffs, furniture, and commodities in bulk) and (2) *foodstuffs* (except in bulk) and *furniture, in mixed loads with the commodities in (1) above*, from the facilities of K-Mart Corporation, at or near Charlotte, NC, to points in IA, IL, IN, MI, MN, MO, OH, and WI, restricted to traffic originating at the named origin and destined to the named states, for 180 days. Supporting shipper(s): K-Mart Corporation, Charles F. Rowe, Director of Trans., 3100 W. Big Beaver Road, Troy, MI 48064. Send protests to: Paul J. Lowry, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 118159 (Sub-298TA), filed November 14, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. *Such commodities as are dealt in by manufacturers or distributors of cleaning aids* (except commodities in bulk) from Girard, PA to points in the United States, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Emsco Company, P.O. Box 151, Girard, PA 16417 (Steve Oas). Send protests to: Connie Stanley, ICC, Room 240, Old U.S. Post Office, 215 Northwest Third, Oklahoma City, OK 73102.

MC 118989 (Sub-208TA), filed November 8, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th

Street, Milwaukee, WI 53221. Representative: Rolland K. Draves (same as above). *Fibreboard cans and metal ends*, from the facilities of Boise Cascade Corporation at Oil City, PA to Albion, NY, Bayonne, NJ, Cincinnati, OH, Detroit, MI, Edison, NJ, Kenton, OH, and Medina, OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Boise Cascade Corporation, P.O. Box 7747, Boise, ID 83707. SEND PROTESTS TO: Gail Daugherty, ICC, U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 119090 (Sub-6TA), filed November 20, 1978. Applicant: THRUWAY FREIGHT LINES, INC., P.O. Box 56, Elmwood Park, NJ 07407. Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. *General Commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment, Between Secaucus, N.J. and Philadelphia, Pa., on the one hand, and on the other Syracuse, N.Y., Scranton, Pa., Wilkes-Barre, Pa., and Milford, Conn. RESTRICTION: Service is restricted to the transportation of shipments moving on bills of lading issued by freight forwarders, for 180 days. SUPPORTING SHIPPER(S): Florida-Texas Freight, Inc., 1055 Peterson Lane, Secaucus, NJ 07094. SEND PROTESTS TO: Joel Morrows, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 123294 (Sub-48TA), filed November 11, 1978. Applicant: WARSAW TRUCKING CO., INC., 1102 West Winona, Warsaw, IN 46580. Representative: H. E. Miller, Jr., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. *Paper and paper products* from the facilities of Kimberly-Clark Corporation at Troy, OH, to points in IL on the north of U.S. Hwy. 40, points in IN on and north of U.S. Hwy. 40, and points in MI on and south of Michigan Hwy. 21, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Kimberly-Clark Corporation, 1414 W. Larsen Road, Neenah, WI 54956. Send protests to: Lois Stahl, I.C.C., Everett McKinley Dirksen Bldg., Room 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 123294 (Sub-49TA), filed November 11, 1978. Applicant: WARSAW TRUCKING CO., INC., 1102 West Winona, Warsaw, IN 46580. Representative: H. E. Miller, Jr., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. *Paper and paper products* from the facilities of St. Regis Paper Company at Troy, OH, to points in that part of MI on and south of Michigan Hwy. 21, that part of IL



on and north of U.S. Hwy. 40, and that part of IN on and north of U.S. Hwy. 40, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: St. Regis Paper Company, 421 S. Union St., Troy, OH 45373. Send protests to: Lois Stahl, I.C.C. Everett McKinley Dirksen Bldg., Room 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 123294 (Sub-50TA), filed November 11, 1978. Applicant: WARSAW TRUCKING CO., INC., 1102 West Winona, Warsaw, IN 46580. Representative: H. E. Miller, Jr., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. *Paper and paper products* from the facilities of Howard Paper Mills, Inc., at Urbana, OH, to Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Howard Paper Mills, Inc., P.O. Box 151, Urbana, OH 43078. Send protests to: Ms. Lois Stahl, I.C.C. Everett McKinley Dirksen Bldg., Room 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 123405 (Sub-59TA), filed November 9, 1978. Applicant: FOOD TRANSPORT, INC., R. D. No. 1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. *Frozen foods*, from the facilities of Pet, Inc., Frozen Foods Division, Allentown and Chambersburg, PA, to all points in the states of AL, FL, GA, KY, LA, MS, NC, SC, TN, VA and WV, restricted to traffic originating at and destined to the above origins and destinations, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pet, Inc., Frozen Foods Division, P.O. Box 392, St. Louis, MO 63166. Send protests to: ICC, Room 278, Federal Building, 228 Walnut Street, P.O. Box 869, Harrisburg, PA 17108.

MC 124078 (Sub-903TA), filed November 14, 1978. Applicant: SCHWERTMAN TRUCKING CO., P.O. Box 1601, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, 611 South 28th Street, Milwaukee, WI 53215. *Cement*, in bulk, from Clinchfield, GA to Redfield, AR, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Medusa Cement Company, P.O. Box 5668, Cleveland Heights, OH 44101. Send protests to: Gail Daugherty, ICC, U.S. Federal Bldg., U.S. Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 124383 (Sub-25TA), filed November 14, 1978. Applicant: STAR LINE TRUCKING CORP., 18460 West Lincoln Avenue, New Berlin, WI 53151. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Salt*, from Chicago, IL to points in WI, for 180 days. SUPPORTING SHIPPER(S): Diamond Crystal

Salt Co., 916 South Riverside Ave., St. Clair, MI 48079. SEND PROTESTS TO: Gail Daugherty, ICC, 619 U.S. Courthouse & Federal Bldg., 517 East Wisconsin Avenue, Milwaukee, WI 53202.

MC 124711 (Sub-69TA), filed November 14, 1978. Applicant: BECKER CORP., P.O. Box 1540, Edmond, OK 73034. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. *Liquefied petroleum gas, in bulk, in tank vehicles*, from the facilities of Phillips Petroleum Company's Pipeline Terminal at or near Paola, KS, and from the facilities of Phillips Petroleum at Kansas City, KS, to points in MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, OK 74004. SEND PROTESTS TO: M. E. Taylor, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 125335 (Sub-37TA), filed November 12, 1978. Applicant: GOOD-WAY, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. *Dairy products*, except in bulk, from the facilities of Valley Lea Dairies at or near New Wilmington, PA to points in FL, GA, NC, SC and VA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Valley Lea Dairies, South Bend, IN 46635. SEND PROTESTS TO: Charles F. Myers, ICC, P.O. Box 869, Federal Square station, 228 Walnut Street, Harrisburg, PA 17108.

MC 125433 (Sub-171TA), filed November 16, 1978. Applicant: F-B TRUCK LINE CO., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson, 1945 South Redwood Road, Salt Lake City, UT 84104. *Insulated building and roofing panels and equipment, materials and supplies used in the installation thereof*, (except commodities in bulk), from the facilities of Panel Era Corporation at or near Dallas, TX to points in the United States, except AK, HI and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Panel Era Corporation, 3447 Main Street, Salt Lake City, UT 84115. SEND PROTESTS TO: L. D. Helfer, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-172TA), filed November 16, 1978. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson, 1945 South Redwood Road, Salt Lake City, UT 84104. *Insulated building and roofing panels and equipment, materials and supplies used in the installation thereof*, (except commodities in bulk), from

the facilities of Panel Era Corporation located at or near Salt Lake City, UT to points in the United States, except AK, AZ, CA, CO, HI, ID, NV (east of a line extending north and south through McDermitt, NV), UT, and WY (west of the Continental Divide), for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Panel Era, 3447 Main, Salt Lake City, UT 84115 (Blaine Thompson, Vice President—Finance). SEND PROTESTS TO: L. D. Helfer, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125996 (Sub-64TA), filed November 13, 1978. Applicant: ROAD RUNNER TRUCKING, INC., 2225 South 400 West, Salt Lake City, UT 84115. Representatives: John P. Rhodes, P.O. Box 5000, Waterloo, Iowa 50704. Mac R. Reber, 2225 South 400 West, Salt Lake City, UT 84115. *Such commodities as are dealt in by retail and discount department stores* (except foodstuffs and commodities in bulk) from Seattle, WA to Omaha, NE. Restricted to traffic with a prior movement by water and further restricted to traffic destined to the facilities utilized by Pamida, Inc. at or near Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pamida, Inc., 8800 F Street, Omaha, NE 68127. SEND PROTESTS TO: L. D. Helfer, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127204 (Sub-12TA), filed November 17, 1978. Applicant: KINDSVATER, INC., P.O. Box 1027, Dodge City, KS 67801. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Anhydrous ammonia*, in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, Okla. to points in KS and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): C&S Trading & Brokerage dba CSTB, Inc., 78A Parsons Plaza, Parsons, KS 67357. SEND PROTESTS TO: M. E. Taylor, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 128273 (Sub-323TA), filed November 16, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same as above). *Honeycomb paper products*, from the facilities of Union Camp Corporation at or near Laurel, VA to points in the United States which are in and east of WI, IL, KY, TN, and MS, for 180 days. Restricted to traffic originating at and destined to the above-named points. SUPPORTING SHIPPER(S): Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. SEND PROTESTS TO: M. E.

Taylor, ICC, 101 Litwin Building, 110 North Market, Wichita, KS 67202.

MC 133119 (Sub-150 TA), filed November 16, 1978. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, P.O. Box 206, Akron, IA 51001. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of John Morrell & Co. at Estherville and Sioux City, IA and Worthington, MN to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Carroll Russell, ICC, Suite 620, Union Pacific Plaza, 110 North 14, Omaha, NE 68102.

MC 135215 (Sub-4 TA), filed November 8, 1978. Applicant: BULK TRANSPORTATION, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin G. Thurman, 415 Lemon Avenue, Walnut, CA 91789. *Lime, in bulk and truckloads, in bags*, from Nelson, AZ to points in CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): U.S. Lime Division, The Flintkote Company, 4700 Ramona Blvd., Monterey Park, CA 91754. SEND PROTESTS TO: Irene Carols, ICC, Rm. 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 135797 (Sub-162 TA), filed November 14, 1978. Applicant: J. B. HUNT TRANSPORT, INC., U.S. Highway 71, P.O. Box 200, Lowell, AK 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AK 72745. *Plastic articles*, from the facilities of Mobil Chemical Company, Plastics Division at Covington and Conyers, Georgia to points in AL, LA, NC, SC, TN and VA, for 180 days. SUPPORTING SHIPPER(S): Mobil Chemical Co., Plastics Division Mecedon, NY 14502. SEND PROTESTS TO: William H. Land, Jr., 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AK 72201.

MC 135874 (Sub-141 TA), filed November 14, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street, South St. Paul, MN 55075. Representative: K. O. Petrick, 550 East Fifth Street South, South St. Paul, MN 55075. *Frozen foods*, (except commodities in bulk) from the facilities of Pet, Inc., Frozen Foods Division, Frankfort, MI to points in CO, IL, IA, KS, MN, MO, NE, ND, OK, SD and WI, for 180 days. An underlying



ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pet Incorporated, Frozen Foods Division, 400 South Fourth St., St. Louis, MO 63102. SEND PROTESTS TO: Delores A. Poe, ICC, 414 Federal Bldg. & U.S. Courthouse, 110 South 4th St., Minneapolis, MN 55401.

MC 135874 (Sub-142TA), filed November 16, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick, 550 East Fifth Street South, South St. Paul, MN 55075. *Alcoholic beverages, supplies and equipment used in the sales of alcoholic beverages*, from the facilities of Joseph E. Seagram & Sons, Inc. at Louisville, KY and Lawrenceburg, IN to Superior, WI, Sioux Falls and Rapid City, SD, Bismarck and Fargo, ND, Hibbing, Golden Valley, Long Prairie, Minneapolis and St. Paul, NM. Restricted to traffic originating at the facilities of Joseph E. Seagram & Sons at Louisville, KY and Lawrenceburg, KY and destined to the named points, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPERS(S): Joseph E. Seagram & Sons, Inc., 800 Third Avenue, New York, NY 10022. SEND PROTESTS TO: Delores A. Poe, ICC, Bureau of Operations, 414 Federal Bldg. & U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 140176 (Sub-12TA), filed November 17, 1978. Applicant: POWELL TRUCKING CO., INC., Route 3, Box 13, Sumrall, MS 39482. Representative: Fred W. Johnson, Jr., 1500 Deposit Garanty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* from the facilities of Leaf River Forest Products, Inc., at or near New Augusta, MS to points in AL, GA, IA, MI, MN, WI, points in that part of IL north of U.S. Hwy. 36, points in that part of IN east of U.S. Hwy. 231, points in that part of KY east of U.S. Hwy. 231, points in that part of TN east of U.S. Hwy. 31, and points in that part of FL north of FL Hwy. 50, under a continuing contract or contracts with Leaf River Forest Products, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Leaf River Forest Products, Inc., P.O. Box 326, New Augusta, MS 39462. SEND PROTESTS TO: Alan C. Tarrant, ICC, Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

MC 140262 (Sub-6TA), filed November 15, 1978. Applicant: VIKING TRANSPORT, INC., 585 Hi Tech Way, Oakdale, CA 95361. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA

94108. *Barite ore, in bulk*, from mines and processing facilities near Springdale, WA, to Florin, CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Western Mud Sales & Service, Inc., P.O. Box 1478, Bakersfield, CA 93302. SEND PROTESTS TO: Michael M. Butler, ICC, 211 Main, Suite 500, San Francisco, CA 94105.

MC 140452 (Sub-11TA), filed November 15, 1978. Applicant: ROSE BROTHERS TRUCKING, INC., 2425 U.S. Business Highway 41 North, Suite 204, Evansville, IN 47711. Representative: David Konnersman, 5101 Madison Avenue, Indianapolis, IN 46227. *Coal, dump vehicles*, from the coal mine of Pyro Mining, Inc., located in Union and Webster Counties, KY, to Holt, AL, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER: Pyro Mining, Inc., P.O. Box 267, Sturgis, KY, 42459. SEND PROTESTS TO: Beverly J. Williams, ICC, Federal Bldg. & U.S. Courthouse, 46 East Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 140557 (Sub-2TA), filed November 16, 1978. Applicant: CALEX EXPRESS, INC., 149 Warden Avenue, Trucksville, PA 18708. Representative: Alan Kahn, Esq., Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *lighting fixtures and materials and supplies* (except commodities in bulk) used in the manufacture or distribution of lighting fixtures, from the facilities of Keystone Lighting Corporation at or near Bristol, PA to points in AZ, CA, CO, ID, MT, NM, NV, ND, OR, SD, UT, WA, and WY for 180 days. RESTRICTION: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Keystone Lighting Corporation of Bristol, PA. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Keystone Lighting Corporation, Beaver Street and Route 13, Bristol, PA 19007. Send Protests to: Paul J. Kenworthy, District Supervisor, ICC, 314 U.S. Post Office, N. Washington Ave. & Linden St., Scranton, PA 18503.

MC 141150 (Sub-9TA), filed November 15, 1978. Applicant: ATLAS WAREHOUSING CO., 510 West Kearsley Street, Flint, MI 48506. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *products distributed by Atlas Sugar, Inc.* (i) from points in IL, OH, IN and NY to Flint, MI; and (ii) from Flint, MI to points in IN and OH under continuing contract or contracts with Atlas Sugar, Inc. of

Flint, MI, for 180 days. SUPPORTING SHIPPER(S): Atlas Sugar, Inc., 510 West Kearsley Street, Flint, MI 48506. SEND PROTESTS TO: Tim Quinn, ICC, Bureau of Operations, 604 Federal Bldg. & U.S. Courthouse, 231 West Lafayette Blvd., Detroit, MI 48226.

MC 142283 (Sub-2TA), filed November 10, 1978. Applicant: VOORHORST, INC., 2099 East Packard Highway, Charlotte, MI 48813. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Soybean meal*, from the facilities of Bunge Corporation at or near Logansport, IN to various points in the Lower Peninsula of MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Farm Bureau Services, Inc., 7373 W. Saginaw Highway, Lansing, MI 48917. Bunge Corporation, R.R. 2, Box 113, Logansport, IN 46947. Plainwell Elevator Co., 717 E. Bridge Street, Plainwell, MI 49080. SEND PROTESTS TO: C. R. Flemming, ICC, Room 225, Federal Building, Lansing, MI 48933.

MC 142283 (Sub-3TA), filed November 10, 1978. Applicant: VOORHORST, INC., 2099 East Packard Highway, Charlotte, MI 48813. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Animal and poultry feed, including soybean meal, animal and poultry health products, pesticides, in bulk and in packages*, (A) between the plant sites of Ralston Purina Company at or near Richmond, Lafayette and Milford, IN, on the one hand, and, on the other, points in Eaton County, MI; (B) from the plant sites of Ralston Purina Company at or near Richmond and Lafayette, IN to points in Kalamazoo and Van Buren Counties, MI; and (C) from the plant site of Ralston Purina Company at or near Milford, IN to points in the Lower Peninsula of MI except points in Berrian, Cass, St. Joseph, Branch, Van Buren and Kalamazoo Counties, MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. SEND PROTESTS TO: C. R. Flemming, ICC, 225 Federal Building, Lansing, MI 48933.

MC 142953 (Sub-1TA), filed November 15, 1978. Applicant: C. A. CARTER, INC., 239 Broadturn Road, West Scarborough, ME 04074. Representative: Carl A. Carter, 239 Broadturn Road, West Scarborough, ME 04074. *Scrap metals* from points in NH, to Everett, MA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Prolerized New England Co., P.O. Box 48, Rover Street, Everett, MA. SEND

PROTESTS TO: ICC, Rm. 305, 76 Pearl St., Portland, ME 04111

MC 143331 (Sub-3TA), filed November 8, 1978. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 East Compton Boulevard, P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dried noodles*, from Gardena, CA to Dallas and Houston, TX; Denver, CO; Kansas City, MO; Phoenix, AZ; and Salt Lake City, UT, under a continuing contract or contracts with Nissin Foods (USA) Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Nissin Foods (USA) Co., 2001 W. Rosecrans Avenue, Gardena, CA 90249. Send protests to: Irene Carlos, Transportation Assistant, ICC, Rm. 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144130 (Sub-3TA), filed October 17, 1978. Applicant: RUSSELL GRILLS, d.b.a. GRILLS TRUCKING, 2225 East 33 Avenue, Vancouver, BC Canada. Representative: James T. Johnson, 1610 IBM Building, Seattle, WA 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foundry supplies including moulding sand and coated sand, foundry facing, coal dust, sea coal and carbon raiser*, from points in CA., to points of entry on the U.S. Canada boundary line at or near Blaine, WA., restricted to traffic destined to points in Canada and moving under a continuing contract or contracts, with Overseas Commodities Ltd., for 180 days. SUPPORTING SHIPPER(S): Overseas Commodities Limited, 750 Industrial Avenue, Vancouver, B.C. Canada V6A 2P3. SEND PROTESTS TO: Hugh H. Chaffee DS, ICC, 858 Federal Bldg., 915 Second Avenue, Seattle, WA 98174.

MC 144351 (Sub-1TA), filed November 1, 1978. Applicant: DON HAUSAUER, d.b.a. DON HAUSAUER TRUCKING, Fort Lincoln Estates, Bismarck, ND 58501. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Floor coverings*, from points in GA and TN to points in ND, SD, WY and MT, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): D & M Carpet Sales, Box 678, Devils Lake, ND 58301. SEND PROTESTS TO: Ronald R. Mau, ICC, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 144572 (Sub-6TA), filed November 13, 1978. Applicant: MONFORT TRANSPORTATION CO., P.O. Box G, Greeley, CO 80631. Representative:



John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. *Paper and paper products* (except in bulk), from the facilities of Champion International Corporation at or near Cincinnati and Hamilton, OH to the commercial zones of Bentonville and Little Rock, AR; Colorado Springs and Denver, CO; Clinton and Des Moines, IA; Kansas City, Topeka and Wichita, KS; Minneapolis and St. Paul, MN; Kansas City and St. Louis, MO; Lincoln and Omaha, NE; and Oklahoma City and Tulsa, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH. Send protests to: Roger L. Buchanan, ICC, 721 19th St., 492 Customs House, Denver, CO 80202.

MC 144622 (Sub-26TA), filed November 14, 1978. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phil Glenn (same as above). *Foodstuffs, rubber and plastic articles and drugs*, from Altavista, VA to points in AR, CA, CO, IL, LA, OK, KS, MO, TN, TX, UT, OR and WA, for 180 days. RESTRICTION: The operations above are restricted to traffic originating at the facilities of Ross Laboratories (a division of Abbott Laboratories). An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Ross Laboratories (Division of Abbott Laboratories), 625 Cleveland Avenue, Columbus, OH 43216. SEND PROTESTS TO: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144698 (Sub-3TA), filed October 17, 1978. Applicant: GAYLE A. GARNER, d.b.a. GARNER TRUCKING, 510 North Lennox, Casper, WY 82601. Representative: Gayle A. Garner, 510 North Lennox, Casper, WY 82601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts, accessories, bodies, hoists, tool boxes and materials and supplies* used in connection with construction of special vehicles, between points in WY and MT and Houston, Dallas, Fort Worth, Abilene, TX, Moore, Oklahoma City, Tulsa, OK, Wichita and Ottawa, KS, under a continuing contract or contracts with Colman Equipment Co., Inc., Casper, WY, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Colman Equipment Co., Inc., P.O. Box 213, Casper, WY 82602. SEND PROTESTS TO: Paul A. Naughton DS, ICC, Room 105 Federal Bldg., Court House, 111 South Wolcott, Casper, WY 82604.

MC 145465TA, filed October 2, 1978. Applicant: GURN ENTERPRISES,

INC., Route 6, Box 8, Allegan, MI 49010. Representative: Edward N. Button, P.O. Box 1417, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and toilet articles and materials and supplies* used in the manufacture, sale and distribution thereof, between Allegan, MI, and points in its commercial zone, on the one hand, and, on the other, points in AR, CT, DE, DC, KY, ME, MD, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, NH, and MA, under a continuing contract or contracts, with L. Perrigo Company, for 180 days. SUPPORTING SHIPPER(S): L. Perrigo Company, 117 Water Street, Allegan, MI 49010. SEND PROTESTS TO: C. R. Flemming DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 145485 (Sub-1TA), filed October 4, 1978. Applicant: DAVIS CARTAGE CO., P.O. Box 96, Corunna, MI 48817. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Dried sugar beet pulp*, (in bulk, in dump vehicles), from the facilities of Michigan Sugar Company at or near Caro, Carrollton, Crosswell and Sebawaing, MI, to Essexville and Port Huron, MI, restricted to traffic having a subsequent movement by water to points outside the continental U.S., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Michigan Sugar Company, 300 Plaza North, P.O. Box 960, Saginaw, MI 48606. SEND PROTESTS TO: C. R. Flemming DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 145513 (Sub-2TA), filed November 17, 1978. Applicant: SERVICE TRANSPORTATION, INC., 125 North 6th Street, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, equipments, materials, and supplies used in the conduct of such business*, between the facilities of Gossner Cheese Co., at or near Logan, UT, on the one hand and on the other, points in ID, OR, WA, and CA, under a continuing contract or contracts with Gossner Cheese Co., and between the facilities of Swiss Village Cheese at or near Nampa, ID, on the one hand and on the other, points in CA, OR, UT, and WA, under continuing contract or contracts with Swiss Village Cheese, for 180 days. An underlying ETA seeks to 90 days authority. SUPPORTING SHIPPER(S): Gossner Cheese Co., 10th North, Logan, UT 84321. Swiss Village Cheese, P.O. Box 280, Nampa, ID 83651. SEND PROTESTS TO:

Barney L. Hardin, ICC, 1471 Shoreline Dr., Suite 110, Boise, ID 83706.

MC 145588 TA, filed October 17, 1978. Applicant: GULF-MIDWESTERN, INCORPORATED, 12151 West 44th Avenue, Wheat Ridge, CO 80033. Representative: William W. Selman, 18500 John F. Kennedy Boulevard, Houston, TX 77205. *Foodstuffs, frozen or other than frozen, and canned goods*, from facilities of Skyland Foods Corp., at or near Delta, CO, to all points in the States of Arizona, California, Illinois, Iowa, Kansas, Nebraska, Oklahoma, New Mexico, Missouri, Texas and Utah, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Skyland Food Corporation, 9th & Dodge Street, Delta, CO 81416. SEND PROTESTS TO: Roger L. Buchanan DS, ICC, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 145660 (Sub-1TA), filed November 17, 1978. Applicant: CALLISTAR & SONS TRUCKING, 3077 Midwest Drive, Salt Lake City, UT 84118. Representative: Stuart L. Poelman, 700 Continental Bank Building, Salt Lake City, UT 84101. *Lumber, lumber mill products and wood fiber building materials* from points in WA and OR and points in CA in and north of the counties of Sonoma, Napa, Solano, San Joaquin, Calaveras, and Tuolumne to points in UT, ID, WY and CO, for 180 days. An underlying ETA seeks 90 days authority. There are (6) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: L. D. Helfer, ICC, 5301 Federal Building, Salt Lake City, UT 84138.

MC 145680 (Sub 1TA), filed November 16, 1978. Applicant: C & R TRUCKING, LTD., 2955 Packers Avenue, Madison, WI 53704. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. (1) *Bakery goods*, from the facilities utilized by Bagels Forever, Inc., at Madison and Milwaukee, WI to points in St. Louis, Olmsted, Ramsey and Hennepin Counties, MN; and Chicago and its commercial zone, IL; and (2) *Flour*, From points in St. Louis, Olmsted, Ramsey and Hennepin Counties, MN; and Chicago and its commercial zone, IL to the facilities utilized by Bagels Forever, Inc., at Madison and Milwaukee, WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Bagels Forever, Inc., 2947 University Avenue, Madison, WI 53705. SEND PROTESTS TO: Mr. John Ryden, ICC, U.S. Federal Courthouse, Room 619,

517 East Wisconsin, Milwaukee, WI 53202.

MC 145710 TA, filed November 8, 1978. Applicant: CHARLES ALBERT MACON, d.b.a. Macon Farms Truck and Truck Leasing, 101 Evans Road, Cheraw, SC 29520. Representative: Robert W. Gerson or James W. Freeman, 1400 Candler Building, Atlanta, GA 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *Containers, container components and ends, container closures, and materials, equipment and supplies used in the manufacture and distribution of containers, container ends and container closures*, except commodities in bulk, between Cheraw, SC on the one hand, and on the other, points in AL, AR, DE, GA, KY, LA, MD, MS, MO, NJ, NC, PA, TN, TX, and VA, under a continuing contract or contracts with Crown Cork and Seal, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Crown Cork and Seal, Inc., P. O. Box 792, Cheraw, SC 29520. SEND PROTESTS TO: E. E. Strothaid, ICC, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 20201.

MC 145712 TA, filed November 8, 1978. Applicant: DALE A. MEADER, P.O. Box 30213, Billings, MT 59107. Representative: Jerome Anderson, Anderson, Symmens, Brown, Gerbase, Cebull & Jones, 100 Transwestern Building, Billings, MT 59101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, building block, sewer tile and allied clay products*, from Billings and Lewistown, MT to points and places in Mercer County, ND, under a continuing contract or contracts with The Lovell Clay Products Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Lovell Clay Products Company, P. O. Box 2096, Billings, MT 59103. SEND PROTESTS TO: Paul J. Labane, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 145714 TA, filed November 9, 1978. Applicant: EARL M. CHRISTOPHERSON, d.b.a., CHRISTOPHERSON TRUCKING, Rural Route 3, Mondovi, WI 54755. Representative: Wayne W. Wilson, 150 E. Gilman Street, Madison, WI 53703. (1) *Lumber, lumber products, ties, timbers, posts and logs*, from the Town of Dover, Buffalo County, WI to points in WY; and (2) *Lumber*, From points in WY and SD to the town of Dover, Buffalo County, WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Leirmo Lumber, Inc., Box B, Mondovi, WI 54755. SEND PROTESTS TO: De-



lores A. Poe, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145743 (Sub-1TA), filed November 13, 1978. Applicant: TFS, INC., Box 126, Rural Route 2, Grand Island, NE 68801. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. Frozen onion products and frozen mushrooms from the facilities of Delicious Foods, at or near Grand Island, Lincoln, and Hastings, NE, to points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Delicious Foods Co., Box 730, Grand Island, NE. Send protests to Max Johnston, ICC, 285 Federal Building & U.S. Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 145747 (Sub-1TA), filed November 16, 1978. Applicant: R & S TRANSPORT INC., 3601 Wyoming Avenue, Dearborn, MI 48120. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Portland cement and mortar from East Fultonham, OH, to points in IN, KY, MI, PA, and WV; and from Nitro, WV, to points in KY, OH, and PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Columbus Cement Corporation, 3059 East Mound St., Columbus, OH 43209. SEND PROTESTS TO: Tim Quinn, ICC, Bureau of Operations, 604 Federal Bldg. & U.S. Court House, 231 West Lafayette Blvd., Detroit, MI 48226.

MC 145748 (Sub-1TA), filed November 11, 1978. Applicant: MEYERS TRANSFER, INC. Route 64 East, Mt. Morris, IL 61054. Representative: Robert H. Levy, 29 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a contract carrier,

by motor vehicle, over irregular routes, transporting: Machinery, machine parts, and trailers, from Oregon, IL to points in the 48 states and used machinery and trailers and supplies used in the manufacture of machinery, machine parts and trailers, from 48 states to Oregon, IL under a continuing contract or contracts with E. D. Etnyre & Co., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): E. D. Etnyre & Co., 200 Jefferson Street, Oregon, IL. SEND PROTESTS TO: Lois M. Stahl, ICC, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145750 (TA), filed November 14, 1978. Applicant: CHARLES SIZE-MORE, d.b.a. C.S. TRUCK SERVICE, 930 Caroline Street, O'Fallon IL 62269. Representative: Charles Sizemore (same as above). Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Ice cream, sherberts, ice cream novelties and related dairy products, between O'Fallon, IL, on the one hand, and, on the other, points in IN and MO, under a continuing contract or contracts with Prairie Farms Dairy, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Prairie Farms Dairy, Inc., 1800 Adams Street, Granite City, IL 62040. SEND PROTESTS TO: Charles D. Little, ICC, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145752 (TA), filed November 15, 1978. Applicant: FRANK M. DANIELSEN, d.b.a. DANIELSEN TRUCKS AND TRACTORS, 26643 Whitehorn Drive, Palos Verdes, CA 90274. Representative: Frank M. Danielsen, 26643 Whitehorn Drive, Palos Verdes, CA 90274. Authority sought to operate as a contract carrier, by motor vehicle,

over irregular routes, transporting: (1) Lumber, plywood and wooden panelling, with or without trailers equipped with lumber rollers, (a) from Long Beach Harbor, CA., to points in Imperial, Los Angeles, Orange, Riverside, San Bernardino and San Diego Counties, CA., and (b) from Long Beach Harbor, CA., to the facilities of Weyerhaeuser Company located at Fresno, CA., under a continuing contract or contracts with Weyerhaeuser Company located at Long Beach, CA., and (2) Lumber, (a) from Los Angeles and Long Beach Harbors, CA., and (b) from San Diego Harbor, CA., to points in Imperial, Los Angeles, Orange, Riverside, San Bernardino and San Diego Counties, CA., under a continuing contract or contracts with Tri-County Lumber, Inc., located at Oceanside, CA, for 180 days. SUPPORTING SHIPPER(S): Weyerhaeuser Company, 1930 Edison Way, Long Beach, CA 90801. Tri-County Lumber, Inc., P.O. Box 388, Oceanside, CA 92054. SEND PROTESTS TO: Irene Carlos, ICC, Rm. 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145755 (TA), filed November 11, 1978. Applicant: D & L CARTAGE, INC., P.O. Box 170, 1865 Bernice Road, Lansing, IL 60438. Representative: James Robert Evans, 145 West Wisconsin Avenue, Neenah, WI 54956. Soybean meal and soybean hulls in bulk, from Chicago, IL, to points in IN, MI and WI, for 180 days. SUPPORTING SHIPPER(S): Cargill, Inc., 122nd and Torrence Avenue, Chicago, IL 60617. SEND PROTESTS TO: Lois M. Stahl, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

By the Commission.

H. G. HOMME, Jr.  
Acting Secretary.

(IFR Doc. 78-35859 Filed 12-27-78; 8:45 am)

## sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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### [6320-01-M]

#### CIVIL AERONAUTICS BOARD.

Notice of addition of item to the December 21, 1978, meeting agenda.

TIME AND DATE: 10 a.m., December 21, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Docket 34240; Application of Kris Kringle for authorization to provide service in celebration of the annual Festival of Children. (Memo 8388, BPDA.)

STATUS: Open.

#### PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Board notes that certain holidays affecting the well-being of the world's children will occur prior to the next scheduled Board Meeting. Approval is needed before the applicant can perform the anticipated operation. Accordingly, the following Members have voted that agency business requires the addition of this item to the December 21, 1978 agenda and that no earlier announcement of this addition was possible: Chairman Marvin S. Cohen, Member Elizabeth E. Bailey, and Member Gloria Schaffer.

(S-2601-78 Filed 12-26-78; 10:31 am)

### [6320-01-M]

#### CIVIL AERONAUTICS BOARD.

Notice of deletions of items and change of time to the December 21, 1978, meeting agenda.

TIME AND DATE: 10 a.m., December 21, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 16. (1) Docket 33223, Federal Express petition for an order to show cause on its certificate application for Midway-Cleveland/Detroit/Kansas City/Minneapolis/Pittsburgh/St. Louis nonstop authority. (2) Docket 33462, Wright's petition for an order to show cause on its certificate amendment application for Midway-Cleveland/Detroit nonstop authority. (3) Docket 33548, Frontier's application for Midway-Cleveland/Detroit/Kansas City/Minneapolis/Pittsburgh/St. Louis nonstop authority and its motion to consolidate with Federal Express' application. (4) American's answer requesting some of the same authority. (Memo 8373, 8373-A, BPDA, OGC, BALJ.)

29. Part 252 of the Board's Economic Regulations—(1) Final rule on seating segregation (2) Proposed rules on further amendments. (Memo 7323-E, 7323-F, OGC)

STATUS: Open.

#### PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Item 16 was deleted from the December 21, 1978 agenda due to further staff coordination. Member O'Melia was not present at the December 21, 1978 meeting and would like Item 29 to be discussed when he is present. Accordingly, the following Members have voted that agency business requires the deletions of Items 16 and 29 from the December 21, 1978 agenda and no earlier announcement of this change was possible. Chairman Marvin S. Cohen, Member Elizabeth E. Bailey, and Member Gloria Schaffer.

(S-2602-78 Filed 12-26-78; 10:31 am)

### [6714-01-M]

#### FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the

Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on November 30, 1978, the Corporation's Board of Directors determined, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac, that Corporation business required the addition of the following matters to the agenda for the meeting, on less than seven days' notice to the public:

Memorandum and resolution proposing the publication for comment of amendments to Part 345 of the Corporation's rules and regulations, entitled "Community Reinvestment," to implement an amendment to the community Reinvestment Act of 1977 which relates to financial institutions whose business predominantly consists of serving the needs of military personnel who are not located within a defined geographic area.

Resolution proposing the adoption of a Liquidation Graded Pay System for the Corporation.

The Board further voted, by the same majority vote, to withdraw from consideration a memorandum and resolution proposing the adoption of a statement of policy, and the publication for comment of proposed amendments to Part 337 of the Corporation's rules and regulations, regarding income derived from the sale by bank insiders of credit life, health or accident insurance to loan customers of insured State nonmember banks.

The Board of Directors further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 30, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,  
HOYLE L. ROBINSON,  
Assistance Executive Secretary.  
(S-2605-78 Filed 12-26-78; 2:32 pm)

### [7590-01-M]

#### NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: December 21, 1978 (changes).

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.



## MATTERS TO BE CONSIDERED:

THURSDAY, DECEMBER 21

12 a.m. (approximately)—1. Affirmation session (approximately 10 minutes) (public meeting).

- a. Order in UCS petition for reconsideration postponed.  
b. 145b. Waiver for Employment.

2:30 p.m.—2. Discussion of nuclear export—related matter (approximately 1 hour, closed—exemption 1).

NOTE.—The Commission voted unanimously on December 21 to hold the above on less than 7 days notice to the public. Prompt scheduling was required in order to assure that response deadlines would be met in a timely fashion.

## CONTACT PERSON FOR MORE INFORMATION:

Walter Magee (202) 634-1410.

ROGER M. TWEED,  
Office of the Secretary.

DECEMBER 21, 1978.

[S-2606-78 Filed 12-26-78; 2:32 pm]

## [7590-01-M]

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## NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: December 22, 1978.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

## MATTERS TO BE CONSIDERED:

FRIDAY, DECEMBER 22

9:30 a.m.—1. The meeting titled discussion and vote on a member of the Palo Verde Hearing Board (approximately 1 hour, public meeting) has been rescheduled to 2:30 p.m.

3 p.m.—1. Discussion of international safeguards—export matter (approximately 1 hour, closed—Exemption 1).

NOTE.—The Commission voted 4-0 (Commissioner Kennedy not participating) on December 22 to hold the 3:00 item on less than 7 days notice to the public. Prompt attention was needed for this meeting of importance.

## CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,  
Office of the Secretary.

DECEMBER 22, 1978.

[S-2607-78 Filed 12-26-78; 2:32 pm]

## [7715-01-M]

6

## POSTAL RATE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, January 4, 1979.

PLACE: Conference Room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open/closed.

## MATTERS TO BE CONSIDERED:

Open meeting: Docket No. MC70-2—Discussion of possible field hearings.

Closed meeting: Discussion of potential mail classification proceeding dealing with red-tag publications.

Closed pursuant to 5 U.S.C. 552b(c)(10).

## CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer,  
Postal Rate Commission, Room 500,  
2000 L Street NW., Washington,  
D.C. 20268, telephone 202-254-5614.

[S-2604-78 Filed 12-26-78; 12:29 pm]

## [7710-12-M]

7

## POSTAL SERVICE—BOARD OF GOVERNORS.

## MEETING

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Tuesday, January 9, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

## AGENDA

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the occurrence of a recent Congressional hearing, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

## 3. Performance Report on Christmas Mail.

(Mr. Conway, Deputy Postmaster General, will report on the service performance of the USPS during the Christmas mailing period.)

## 4. Annual Report on Open Meetings Compliance.

(Mr. Cox, General Counsel, will present for the approval of the Board, the annual report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)

## 5. Temporary classification change proposal for Carrier Route Presort Third-class Bulk Mail.

(Under the Postal Reorganization Act (39 U.S.C. § 3641(e)), if the Postal Rate Commission does not transmit a recommended decision on a change in the Mail Classification Schedule to the Governors of the Postal Service within ninety days after the Postal Service has submitted to the Commission a request for such a recommended decision, the Postal Service, upon ten days notice in the FEDERAL REGISTER, may place into effect temporary changes in the Mail Classification Schedule in accordance with proposed changes under consideration by the Commission. The Postal Service requested a recommended decision on September 8, 1978, to change the Domestic Mail Classification Schedule to establish a third-class carrier route presort subclass. The Board will consider the question of whether the Postal Service should place the proposal into effect on a temporary basis.)

## 6. Annual Report of the Postmaster General.

(The Board will consider the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service as required by 39 U.S.C. § 2402. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and to the Congress.)

## 7. Capital Investment Projects.

(a) Container Procurement. (Mr. Coughlin, Assistant Postmaster General, Mail Processing Department, will present a proposed capital investment for the procurement of containers falling into several major categories.)

(b) Proposed new General Mail Facility and Vehicle Maintenance Facility at Pittsburgh, Pennsylvania. (Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present a proposed capital investment for a new postal facility at Pittsburgh, Pennsylvania.)

(c) Procurement of One-Ton Trucks. (Mr. Braughton, Assistant Postmaster General, Delivery Services Department, will present a proposal for a capital investment for the purchase of 1,858 one-ton trucks.)

## 8. Recommended Decision of the Postal Rate Commission on a Proposed Change in the Domestic Mail Classification Schedule.

(The Governors will consider the Recommended Decision of the Commission dated December 7, 1978, to Reject a Proposal by Dow Jones and Company to Restructure Second-Class Rates (Docket No. MC76-2).)

## 9. Election of Chairman and Vice-Chairman of the Board and Appointment of Committees of the Board.

(Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice-Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and a Vice-Chairman. In addition, the terms of appointments to committees of the Board expire at the end of each Annual Meeting. The Chairman of the Board appoints the Chairman and members of each Committee.)

LOUIS A. COX,  
Secretary.

[S-2599-78 Filed 12-26-78; 10:31 am]

## [7710-12-M]

## POSTAL SERVICE—BOARD OF GOVERNORS.

## COMMITTEE MEETING

The Committee on Postal Rates of

the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39-CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 A.M. on Tuesday, January 9, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will discuss the Recommended Decision of December 7, 1978, to Reject a Proposal by Dow Jones and Company to Restructure Second-Class Rates (Docket No. MC76-2).

LOUIS A. COX,  
Secretary.

[S-2600-78 Filed 12-26-78; 10:31 am]

## [8240-01-M]

9

## UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 4, 1979.

PLACE: Board Room, room 2-500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: Parts of this meeting will be

open to the public. The rest of the meeting will be closed to the public.

## MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

PORTIONS CLOSED TO THE PUBLIC (9 a.m.)

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
4. Litigation report.

PORTIONS OPEN TO THE PUBLIC (1:30 p.m.)

5. Approval of minutes of the December 7, 1978 Board of Directors meeting and the December 15, 1978 meeting of the Executive Committee of the Board of Directors.
6. Discussion of Annual Report.
7. Report on Conrail monitoring.
8. Consideration of Conrail first quarter 1979 Investment Commitment.
9. Consideration of Conrail draw-down request for January 1979.
10. Consideration of Conrail waiver requests.
11. Consideration of 211(h) program.
12. Contract actions (extensions and approvals).

## CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-2603-78 Filed 12-26-78; 10:31 am]







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BOOK 2 OF 2 BOOKS  
THURSDAY, DECEMBER 28, 1978

## PART II



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant  
Secretary for Community  
Planning and  
Development

## COMMUNITY DEVELOPMENT BLOCK GRANTS

Discretionary Grants from  
Secretary's Fund in Behalf of New  
Communities

Registered Property



[4210-01-M]

# Title 24—Housing and Urban Development

## CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

(Docket No. R-78-587)

### PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

#### Discretionary Grants From Secretary's Fund in Behalf of New Communities

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: The interim rule revises the Section of the CDBG regulations governing grants in behalf of new communities from the Secretary's Discretionary Fund. The revision is intended to clarify the existing requirements under that Section as well as to incorporate new provisions reflecting changes in Departmental policy. Chief among the new provisions are new selection criteria, new citizen participation requirements, a new application submission cycle and a requirement for an NCDC finding that the new community is in compliance with its low and moderate income housing goals prior to the award of any grant under this Section.

DATES: Effective date: December 28, 1978. Comments received on or before January 29, 1979 will be considered in preparing the final rule.

ADDRESS: Comments should be sent to: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

#### FOR FURTHER INFORMATION CONTACT:

Robert Warner, Project Support Division, New Community Development Corporation, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6092.

SUPPLEMENTAL INFORMATION: Section 570.403 of Subpart E (Secretary's Fund) of the Community Development Block Grant (CDBG) Regulations (24 CFR Part 570) has been reorganized, edited and partially rewritten in addition to having new provisions added. The purpose of the editing and revision is to include policies and interpretations accumulated since the regulation was initially issued, to eliminate obsolete language, to conform the regulation to changes in Subpart C of the

CDBG regulations (Eligible Activities) and in the New Communities Program, and to improve the readability and usefulness of the regulation. The General Manager, New Community Development Corporation (NCDC), has also determined that the existing criterion for selection of activities and projects for assistance under this Section is not fully consistent with Departmental goals and should be revised to clearly state that priority consideration will be given to projects and activities which benefit low- and moderate-income persons or which are necessary to maintain the economic viability of the new community.

For the reasons discussed below, the Secretary has determined that these revised regulations are urgently needed for the Fiscal Year 1979 grant cycle and that it is impractical and contrary to the public interest to provide for notice and public comment before this revised Section becomes effective.

Applications for funds under this Section must be received by NCDC between October 1, 1978 and January 31, 1979 in order to be reviewed and approved in conjunction with the annual new community project budget cycle.

Pursuant to formal Budget Agreements with the Secretary, such new community project budgets are required to be submitted by most new community developers by specified dates between October 31 and January 31. Four of the budget submissions are due on October 31, another on November 30 and the sixth on January 31. The grant applications need to be submitted, reviewed and approved at the same time as the budgets because, to a great extent, the Secretary's approval of the budgets is based on her agreement to approve funds under this Section for certain facilities and land development activities reflected in the budgets. Being in a position to analyze the budgets and the grant applications at the same time not only improves the Secretary's ability to approve the budgets within the time frames included in the Budget Agreements, but also provides the comprehensive information necessary for her to make sound judgments and decisions with respect to grants to the six new community projects which have Budget Agreements.

Publication of this rule as an interim rule establishes the much-needed requirement to submit applications with the budgets and provides essential guidance to applicants on what should be included in their applications. Present regulations do not contain comparable requirements. Interested persons are invited to participate in the making of the final rule by submitting comments, suggestions and relevant information (referring to the above

docket number), to the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 7th Street, SW., Washington, D.C. 20410. All comments will be carefully considered before adoption of the final rule. Copies of the comments submitted will be available during business hours at the above address for public inspection, and copying.

Because this rule represents a general revision and reorganization of the existing Section 570.403, the changes will be discussed below paragraph-by-paragraph.

#### GENERAL

Existing paragraph (a) has been renumbered paragraph (a)(1) and edited for clarity. The substance of paragraph (a)(2) is contained in existing Section 570.400(a), which provision is expected to be eliminated in a future general revision of Subpart E. Paragraph (a)(2) has also been revised to conform to changes in Subpart designations published at 43 FR 8434, March 1, 1978.

#### ELIGIBLE APPLICANTS

Paragraph (b) has been reorganized and rewritten to eliminate the confusing introductory sentences of existing paragraph (b). The new language groups eligible applicants by public and private entities and provides additional definitional references. While worded differently in some cases, the eligibility of public applicants is substantially the same as in prior regulations. The new definition of eligible private developer-applicants eliminates an unused reference to "subsidiaries" and drops the former proviso to that definition, which is now deemed unnecessary in light of revised requirements regarding public ownership of completed grant-assisted facilities. The definition of eligible community association-applicants has also been edited for clarity and drops the specific reference to "community authorities established under State law", which are covered by clause (1)(iii) of the revised paragraph (b). The definition also adds a requirement for financial capability of the community association in addition to legal and administrative capability.

#### APPLICATION REQUIREMENTS

Paragraph (c) of the interim rule corresponds to paragraph (c) of the existing Section 570.403, with certain technical and editorial revisions.

The application filing period contained in the last sentence of the existing subparagraph (1) has been revised and placed in paragraph (d) of this Section.

Subparagraph (2) entitled "Activities Program" has been rewritten to list in greater detail the information

describing the proposed grant activities and projects required to be submitted as part of the application under this Section. In addition, HUD is asking for information not previously required so that better eligibility and funding determinations can be made. New information to be required includes information relating the proposed activities to the selection criteria and the New Community's approved Budget (if applicable), applicable environmental and A-95 clearances, and ownership of the sites of proposed grant-assisted facilities. Much of this information, except as related to the selection criteria, has previously been required by NCDC by letter.

The certifications required in subparagraph (3) are being amended to conform with the revised certifications listing in Section 570.307, and to specify more clearly the certifications required of the various classes of applicants. In addition to the certifications previously required, all applicants will also provide the certifications in Section 570.307 paragraph (i) concerning compliance with certain special requirements; paragraph (j) concerning evaluation of flood hazards; paragraph (k) concerning the making of buildings and facilities accessible to, and useable by, the physically handicapped; paragraph (r) concerning HUD's right to examine all records, books, etc. related to the grant; paragraph (s) concerning compliance with the Environmental Protection Agency's requirements with regard to Violating Facilities; paragraph (t) concerning flood insurance purchase requirements; and paragraph (u) concerning compliance with various historic preservation requirements. Public body applicants will, in addition, provide the following certifications in Section 570.307 which were not previously required: paragraph (b) concerning adoption of a resolution authorizing the filing of the application, paragraph (p) concerning employees' use of positions for private gain, and paragraph (q) concerning compliance with provisions of the Hatch Act.

Subparagraph (4) is merely being edited and rewritten and does not change in substance from the existing regulation.

Subparagraph (5) requires applicants to follow HUD's A-95 implementing regulations at 24 CFR Part 52.

Existing subparagraph (6) on performance reporting is now included in paragraph (h) on program management. New subparagraph (6) includes new requirements concerning citizen participation, which have been added to reflect Departmental policy encouraging maximum citizen participation.

Community Associations and applicants for other specifically identified activities will be required to hold a public hearing and solicit new community residents' views prior to submission of the application.

#### REVIEW OF APPLICATIONS

Paragraph (d) of the existing regulations has been divided into two paragraphs. New paragraph (d) concerns review of applications, while new paragraph (e) concerns the approval of applications.

A cycle for submission of applications has been established in paragraph (d)(1) which will go into effect for FY 1979 appropriations. Applications may be submitted between October 1 and January 31, except that applications being submitted in behalf of New Communities that are subject to Budget Agreements approved by the Secretary must be submitted, unless otherwise authorized by the Secretary, when the New Community developer submits the annual budget. Recognizing the need for flexibility in meeting emergency needs or opportunities, the new regulations also provide for the invitation of additional applications or application amendments if funds remain available. Applications for funds appropriated prior to FY 1979 may be submitted at any time, until all such funds have been obligated or the appropriation expires.

It also specifies that the HUD Area Office will be responsible for assigning a project number and forwarding the application to NCDC, which will accept the application and perform application reviews.

A new subparagraph (2) has been added describing the criteria for acceptance of a grant application for review under this Section.

Subparagraph (3) is based on paragraph (d)(1) of existing regulations, with language added to reflect the existence of a major new document added to New Communities program documents in 1976 and 1977—the Budget Agreement which incorporates a yearly project budget. This subparagraph also states that the selection criteria will be applied during the review of the application. It is HUD's intention to apply the criteria in a manner which ensures that both Block Grant and New Community objectives are met; however, HUD does not intend to develop a numerical ranking system.

Subparagraph (4) is based upon Section 570.400(f)(2) of existing regulations, with language added to reflect the need to review and approve grants during the same general period New Community Budgets are being approved, insofar as staff resources will permit.

#### APPROVAL OF APPLICATIONS

New paragraph (e) has been greatly expanded from the existing paragraph (d) to fully cover the basis for approval of applications, including the new project selection criteria.

New subparagraph (1) was added to clarify the relationship between eligibility requirements under Subpart C of the CDBG Regulations and grants under this Section. This relationship is the same as under existing regulations, as interpreted and administered by HUD, except as the eligibility requirements under Subpart C and the requirements of Section 570.403 have themselves been changed.

Subparagraph (2) contains the substance of the ownership requirements for grant-assisted facilities which are in Section 570.403(h) of the existing regulations. This subparagraph has been revised to reflect revisions to Subpart C of the CDBG Regulations concerning participation in the program by non-profit entities. Under existing paragraph (h) the only exception to public dedication of grant-assisted facilities is that community associations are permitted to own assisted neighborhood facilities. New subparagraph (2) permits community associations to own grant-assisted real property, public facilities and improvements if approved by the Secretary on a case-by-case basis under criteria set forth in clauses (A), (B), and (C), of subparagraph (2)(ii). Dedication to public ownership of grant-assisted facilities will be continued in all other situations where it is otherwise required by Subpart C.

Subparagraph (3) represents a major revision to the selection criterion in paragraph (d)(2) of the existing regulations. The first selection criterion in subparagraph (3) is intended to give priority in the awarding of grants for activities which benefit low- and moderate-income persons. The second criterion emphasizes maintaining the economic viability of existing New Communities and gives priority to certain types of projects and activities which are immediately needed to maintain this viability but for which other funding sources are not available.

In addition to these two principal criteria, there is a criterion based on the new community program objective of encouraging innovation in the meeting of physical, economic or social problems. It is HUD's intention to give additional weight to projects and activities which demonstrate innovative advances in design, energy conservation and environmental protection.

There are also two criteria which reflect prior grant performance and participation. Since the number of new communities for which grants may be applied for under this Section is limited,



ed and because the new communities have developed at different rates and received varying amounts of grant assistance in the past, HUD will consider the prior levels of funding to each new community in evaluating grant requests. It is HUD's intention to provide grant assistance in behalf of new community projects on an equitable basis, taking into account such relative factors as project size and pace. HUD will also consider an applicant's past performance in expending grant funds provided under this Section in the evaluation of grant requests. Applicants who have demonstrated an inability to execute projects in a timely and cost effective manner may not receive grant assistance for projects and activities that in HUD's judgment are beyond the applicant's ability.

Subparagraph (4) contains new provisions not previously included in the regulations. These provisions require that grant-assisted facilities be generally consistent with the annual New Community Budget approved on the basis of a New Community Budget Agreement. Beginning in FY 1979, it is HUD's intention to review the annual project budgets and the grant applications at the same time; and not to fund any projects or activities on the basis of the selection criteria unless the projects or activities are also consistent with the project budgets.

Subparagraph (5) contains a new threshold requirement which requires NCDC to make a finding of compliance with low- and moderate-income housing goals prior to the award of any grant funds. Under this provision NCDC will make an annual finding that the new community is in compliance with the low- and moderate-income housing goals of the New Community Development Plan or that the developer has taken and is committed to take positive steps to comply with those goals. Grant funds will not be awarded in behalf of any new community projects for which such a finding cannot be made.

Subparagraph (6) is substantially the same as the existing regulations in Section 570.400(f)(3) expanded to greater detail. It also provides that the Secretary may make conditional approvals for reasons other than environmental reviews or requirements regarding the provision of public services or flood or drainage facilities, as long as the conditions are specific and are reasonably related to the purpose of the grant. Further, this subparagraph also states the rule that grant approval may be cancelled with respect to funds as to which grant conditions are not met.

#### LETTER TO PROCEED

Paragraph (f) contains the rules governing the incurring of costs and let-

ters to proceed which are currently in Section 570.400(e).

#### PROGRAM AMENDMENTS

Paragraph (g) incorporates the existing Section 570.400(g) and specifies that amendments which propose new activities must be submitted in the same format as the original application. This paragraph also states when prior approval of amendments is required.

#### PROGRAM MANAGEMENT

The substance of paragraph (h) was previously included in the regulations in two places, Section 570.403 (c)(6) and (f), and has now been combined to improve the organization of Section 570.403.

#### EXCEPTIONS TO REGULATIONS

Paragraph (i) contains the substance of existing paragraph (e) and was rewritten to reflect the recodification of Subparts, to correct the reference to the Procurement Standards, and to make the paragraph easier to understand. No substantive changes have been made from the existing regulation.

With respect to this interim revision of Section 570.403, interested persons are invited to participate in the making of the final rule by submitting written comments or views on the proposed amendments. Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. All comments received on or before the date specified above will be considered before adoption of the final rule. Copies of comments will be available for examination during business hours at the above address.

A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1, 38 FR 19182, July 18, 1973. A copy of the Finding is available for inspection and copying in the Office of the Rules Docket Clerk.

Accordingly, 24 CFR Part 570 is hereby amended by revising § 570.403.

#### Subpart E—Secretary's Fund

##### § 570.403 New Communities

(a) *General.* (1) This Section concerns grants for activities and projects which are:

(i) in direct support of a New Community (which term means a new community project approved by the Secretary under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968), and

(ii) reflected in a current New Community Development Plan (the devel-

opment plan which controls the physical and social development of the New Community by agreement between each New Community's developer and the Secretary, as the same may be revised and amended from time-to-time).

(2) Subparts A, B, C, J, K and O of this Part apply to this Section, except to the extent that they are specifically modified or supplemented by this Section.

(b) *Eligible Applicants.* The following entities may apply for and receive grants pursuant to this Section:

(1) *Public bodies,* including only:

(i) States or units of general local government as defined in the first sentence of Section 570.3(v);

(ii) State land development agencies as defined in Section 711(c) of the Housing and Urban Development Act of 1970; or

(iii) other local public bodies or agencies as defined in Section 711(e) of the Housing and Urban Development Act of 1970, which are approved by the Secretary for the purpose of providing public facilities or services to a New Community.

(2) *Private developers and non-profit entities,* including only:

(i) private New Community developers approved under Sections 711(b) and 712(b) of the Housing and Urban Development Act of 1970; and

(ii) community associations or other similar non-profit organizations established in New Community projects under covenants approved by the Secretary, which are legally, financially, and administratively qualified to carry to successful completion those projects for which grant assistance is sought by the community association.

(c) *Application requirements.* (1) *General.* The requirements of this paragraph are designed to supplement requirements of the New Communities Program under which New Community developers will have already provided substantial information to the Secretary.

(2) *Activities program.* The application shall be submitted on forms approved by the Secretary and shall include for each proposed activity:

(i) a description of the activity, including estimated costs and the relationship of the activity to the grant selection criteria in Section 570.403(e)(3);

(ii) a map or maps in readable scale which shows the location of each activity;

(iii) a listing of all sections of the current New Community Development Plan which refer to each activity together with a description of the activity's consistency with the plan, or a statement that the activity was not previously submitted to and approved by HUD as part of Title IV or Title VII documentation;

(iv) references to all provisions of Environmental Impact Statements, A-95 clearinghouse reviews and, as applicable, to any currently approved New Community Budget Agreement or other financial plan reflecting each activity;

(v) an identification of the owner, as of the application date, of any interest in the site of any Grant-assisted Facilities (as defined in paragraph (e) of this Section) to be provided under each activity, including any lien-holders other than the Secretary or a trustee for the Secretary;

(vi) an identification of each entity which will own any Grant-assisted Facilities to be provided under each activity, together with evidence satisfactory to the Secretary that the proposed owner, if other than the applicant, is willing to accept ownership responsibilities; and

(vii) a copy of all A-95 clearinghouse comments which have not previously been submitted to the New Community Development Corporation (NCDC).

(3) *Certifications.* The application shall include the following certifications in such form as the Secretary may prescribe:

(i) New Community developers and community associations eligible for assistance under paragraph (b)(2) of this Section shall provide the assurances required by paragraphs (a), (c), (g), (h), (i), (j), (k), (l), (m), (r), (s), (t), and (u) of Section 570.307;

(ii) States, State land development agencies, and other units of general local government eligible for assistance under paragraph (b)(1) (i) or (ii) of this Section shall provide all of the assurances required by Section 570.307, except paragraphs (d), (e), and (f).

(4) *Environmental review requirements.* (i) For activities proposed by a private developer or community association eligible under paragraph (b)(2) of this Section or by a public body eligible only under paragraph (b)(1)(iii) of this Section no new environmental review or clearances will be required by virtue of any such activity's proposed funding under this Part if the activity is a part of a previously approved New Community project for which environmental review clearances have been completed, which clearances adequately covered such activity, and for which circumstances, including the availability of additional data or advances in technology, have not changed significantly.

(ii) States, State land development agencies and units of general local government eligible under paragraph

(b)(1) (i) or (ii) of this Section shall conduct environmental reviews of proposed activities pursuant to the environmental review procedures in 24 CFR Part 58.

(iii) If neither paragraph (i) or (ii) above applies, the Secretary shall determine the need for environmental reviews and shall conduct any such reviews pursuant to HUD Handbook 1390.1 (38 FR 19182, July 18, 1973), or applicable successor regulations.

(5) *Clearinghouse review.* Applicants must comply with the procedures for reviews by clearinghouses set forth in OMB Circular A-95 and HUD's A-95 implementing regulations at 24 CFR Part 52.

(6) *Citizen Participation Requirements.*

(i) *Purpose.* The requirements of this paragraph (c)(6) are intended to provide citizens of the new community, particularly low and moderate income residents, with the opportunity to provide comments and to participate in the establishment of funding priorities for all applications filed by community associations and for any other applications proposing any of the facilities and activities listed in subparagraph (ii), at both the initial application stage and at any subsequent major amendments or reprogrammings.

(ii) *Scope.* All applications by community associations eligible under Section 570.403(b)(2)(ii) and all other applications under this Section which propose the funding of any of the following activities or any other activities specified by the Secretary, shall comply with the requirements of subparagraph (iii) below:

(A) Acquisition and/or disposition of real property (Section 570.201(a) and (b)) for any of the other activities listed in this subparagraph (ii).

(B) Senior centers (Section 570.201(c)(1)).

(C) Parks, playgrounds and other recreational facilities (Section 570.201(c)(2)).

(D) Centers for the handicapped (Section 570.201(c)(3)).

(E) Neighborhood facilities (Section 570.201(c)(4)).

(F) Fire protection facilities and equipment (Section 570.201(c)(6)).

(G) Pedestrian malls and walkways (Section 570.201(c)(12)).

(H) Public services (Section 570.201(e)).

(I) Removal of architectural barriers (Section 570.201(k)).

(J) Rehabilitation and historic preservation (Section 570.202).

(K) Activities by private non-profit entities, neighborhood-based non-profit organizations, local development corporations, or small business investment companies (Section 570.204).

(L) Provision of information and other resources to residents (Section 570.206(b)).

(M) Provision of fair housing counseling services (Section 570.206(c)).

(iii) *Requirements.* The applicant shall provide for the following, pursuant to its own written citizen participation plan, which will not be subject to prior HUD review or approval:

(A) The provision of program information (including the draft grant application, program regulations and other similar information) to interested citizens of the new community in a timely manner prior to the scheduled public hearing required under subparagraph (C).

(B) The publication of a notice of public hearing in a periodical of general circulation in the new community such as a community association newsletter or local newspaper. The notice shall be published at least once a week during the two weeks preceding the week in which the public hearing is to be held. The notice shall state the time, date and location of the hearing and specify that the purpose of the hearing is to solicit citizen views and opinions concerning the application to be submitted to HUD for a grant in behalf of a new community under the Secretary's Discretionary Fund of the Community Development Block Grant Program. The notice shall also state where the program information can be obtained or examined, whether in person or by mail, and any charges that may apply. A copy of the draft grant application and program regulations must be available at the location specified in the first notice at the time of its publication.

(C) The holding of a public hearing under the auspices of the new community's community association(s). The hearing shall be held at a convenient time and location which permits broad participation, particularly by low and moderate income persons.

(D) The submission of a statement to NCDC with the initial application, amended application, or reprogramming request that these requirements have been met, including copies of the required notices and a summary of the citizen comments.

(d) *Review of applications.* (1) *Submission of applications.*

(i) Applications for grants under this Section from each fiscal year's appropriation after FY 1978 shall, unless otherwise authorized by the Secretary, be submitted from October 1 to January 31 of that fiscal year. For New Communities subject to a Budget Agreement approved by the Secretary, such applications shall be submitted for review with the next year's Budget, unless the applicant receives prior approval from the Secretary to submit the application at a different



time. However, the Secretary may invite the amendment of applications or the submission of additional applications at other times if funds appropriated for the fiscal year remain available after evaluation of all applications under the criteria for selection in (e)(3) of this Section.

(ii) Applications for funds appropriated prior to FY 1979 may be submitted at any time, until all funds have been obligated or the appropriation has expired.

(iii) All applications under this Section shall be submitted to the appropriate HUD Area Office, which will assign a project number and forward the application to NCDC for review.

(2) *Acceptance of application.* NCDC will accept an application for review and consideration for a grant if the following conditions are met:

(i) the application is submitted through the HUD Area Office,

(ii) the application is submitted in accordance with the timing requirements of paragraph (d)(1) (i) and (ii) of this Section;

(iii) in the judgment of NCDC the application is sufficiently complete under the requirements of this Section for the initiation of technical reviews; and

(iv) the applicant has complied with the A-95 clearinghouse review procedures by attaching or enclosing any comments made by or through State and areawide A-95 clearinghouses or by stating that no comments have been received or are required.

(3) *Scope of review.* In addition to reviewing documents included in the application, NCDC's review may include the evaluation of data and information supplied by the developer of the New Community project, including the Project Agreement, Development Plan, Budget Agreement (if any), and other documents, and may include other independent reviews conducted by NCDC staff or others at NCDC request. The review will also include application of the selection criteria included in paragraph (e)(3) of this Section. The applicant may be required to submit relevant supplementary information at any time after acceptance of the application.

(4) *Timing of review.* The Secretary is not required by the Act to review and approve a discretionary grant application under this Section within any specific time period. For applications submitted in conjunction with a New Community Budget as described in paragraph (d)(1)(i) of this Section, the Secretary shall use her best efforts to complete the review and approval of any grants included in such Budget within 60 days after Budget approval.

(e) *Approval of Applications.* (1) *Eligible activities.* Grant assistance

under this Section must be used for activities and projects eligible under Subpart C of this Part. However, the enumeration of certain eligible types of activities in Subpart C does not itself render specific activities proposed by individual applicants eligible for assistance under this Section. Other applicable requirements of Part 570 and this Section must be met to qualify a specific activity for assistance. For example, activities assisted under this Section must be in behalf of and related to a New Community as described in Section 570.403(a), must comply with the ownership requirements in subparagraph 2 of this paragraph (e), and must be approved under the selection criteria in subparagraph 3 of this paragraph (e).

(2) *Ownership requirements.* (i) All facilities, real property, or improvements acquired or constructed with grant assistance provided under this Section ("Grant-assisted Facilities") are subject to the ownership requirements of Subpart C and any additional requirements of this paragraph (e)(2).

(ii) A community association eligible under Section 570.403(b)(2)(ii) must receive approval from the Secretary to own and operate or maintain Grant-assisted Facilities, whether or not the community association is the original grant recipient. Approval will be granted if:

(A) The community association is authorized under its organizational documents, including applicable covenants approved by the Secretary, to own and operate or maintain the Grant-assisted Facilities;

(B) The proposed Grant-assisted Facilities meet applicable requirements for non-public ownership under Subpart C, including the public use requirements in Section 570.204(b), and

(C) The Secretary determines that the community association is otherwise legally, financially, and administratively capable of owning, maintaining or operating the Grant-assisted Facilities.

If the approval is not obtained, a community association grantee shall, prior to disbursement of grant funds for Grant-assisted Facilities requiring dedication, enter into one or more dedication agreements satisfactory in form and substance to the Secretary and shall, prior to grant closeout, dedicate any Grant-assisted Facilities to an entity eligible under Subpart C to own those Facilities.

(iii) Private developers eligible under Section 570.403(b)(2)(i) shall, prior to disbursement of grant funds for Grant-assisted Facilities, enter into one or more dedication agreements satisfactory in form and substance to the Secretary and shall, prior to grant close-out, dedicate any Grant-assisted Facilities to an entity eligible under

Subpart C or paragraph (ii) above to own those facilities.

(3) *Criteria for selection.* The following criteria have been developed in accordance with Departmental goals to select for assistance under this Section among otherwise eligible projects and activities; with primary emphasis on the provision of decent housing and a suitable living environment and expanding economic opportunities, primarily for low- and moderate-income persons. All projects and activities must meet criteria (i) or (ii). Criteria (iii), (iv) and (v) will provide NCDC with a basis for giving additional consideration to those projects and activities which meet the basic criteria.

(i) *Benefit to low- and moderate-income persons.* A project or activity will be considered to benefit low- and moderate-income persons if the applicant demonstrates that:

(A) The activity is designed to meet specific needs of low- and moderate-income persons or families;

(B) The degree to which low- and moderate-income persons and families will be served by the project or activity is greater than their proportionate share of the planned population of the New Community; and

(C) Affirmative efforts will be taken whenever feasible to promote the use of or benefit from the project or activity by low- and moderate-income persons or families.

For the purposes of this Section, low- and moderate-income persons and families shall have the meaning set forth in Section 570.3(o) and (p).

(ii) *Maintains the economic viability of the new community.* A project or activity will be considered to meet this criterion if:

(A) It is immediately needed to maintain the economic viability and growth potential of the New Community in accordance with its development plan and no other sources of funding are immediately available; and

(B) It is a villagewide, townwide, or community facility, as those terms are used in the New Communities Program; or

(C) It will specifically contribute to the development of non-assisted market rate housing which is, in NCDC's judgement, priced to sell or rent at the lower end of the market when viewed in the context of the overall market place for the New Community; or

(D) It is an eligible rehabilitation or preservation activity as set forth in Section 570.202; an eligible economic development activity as set forth in Section 570.203; an eligible activity by a private non-profit entity; neighborhood-based non-profit organization, local development corporation, or small business investment company as

set forth in Section 570.204; an eligible planning or urban environmental design cost as set forth in Section 570.205; or an eligible administrative cost as set forth in Section 570.206.

(iii) *Innovative value.* An activity or project will be considered to support this criterion to the degree it demonstrates innovative advances in design and technology in such areas as land utilization; the construction of buildings and other facilities; energy conservation and production measures; or enhancement of the physical and social environment.

(iv) *Past performance in carrying out grants provided under this Section.* The degree to which the applicant has used funds provided under this Section in a cost effective manner and has expended those funds in a timely fashion will be considered in applying this criterion to activities and projects proposed by a particular applicant. Applicants who have not previously received grants under this Section shall not be given a lower priority for that reason.

(v) *Prior levels of funding.* The degree to which a New Community has already benefitted from grants provided under this Section will be considered in the evaluation of grant applications proposed by any applicant in behalf of a particular New Community. Where all New Community needs cannot be satisfied within the amount of funds appropriated for grants under this Section, those New Community Projects which have received the least relative benefits will be given greater consideration under this criterion.

(4) *Consistency with New Community Budget.* For New Communities with a current Budget Agreement, or other similar financial plan, approved by the Secretary, projects and activities assisted under this Section shall also be generally consistent with the applicable Budget approved by the Secretary, as it may be amended from time to time.

(5) *Finding of compliance with low and moderate income housing goals.* Prior to the award of any grant under this Section in any fiscal year, NCDC shall make a finding that the New Community is in compliance with the current low and moderate income housing goals contained in the New Community Development Plan, or that the New Community developer has taken and is committed, under the terms of its currently approved annual budget or other similar financial plan approved by the Secretary, to take specified positive steps within its control toward compliance with such goals.

(6) *Notification of funding approval; conditional approval.*

(i) The Secretary will notify applicants of the specific grant amount approved for any specific activities and projects funded under this Section and will tender a Funding Approval and Grant Agreement for the applicant's acceptance and execution.

(ii) The Secretary may approve one or more of the specific projects or activities set forth in the Funding Approval upon conditions reasonably related to the purpose of the grant. In that case, the obligation and utilization of grant funds by the grantee may be made contingent upon the occurrence or continuation of specific actions of the grantee or other specific events, which shall be described in the Grant Agreement. The grantee will not be reimbursed for funds spent in violation of any applicable grant conditions, and grant approval may be cancelled and the grant closed out as to grant amounts with respect to which any applicable grant conditions have not been met.

(iii) The Secretary shall issue a conditional approval for specific projects or activities when:

(A) local environmental reviews under Section 570.603 have not been completed; or

(B) the requirements of Section 570.607 regarding the provision of public services or flood or drainage facilities have not yet been satisfied.

(f) *Letter to Proceed.* In response to a request by a public body applicant eligible under Section 570.403(b)(1) the Secretary may, in cases of demonstrated need, issue a letter to proceed authorizing an applicant to incur costs for the planning and preparation of an application for funds available under this Section or, if applicable, for environmental review pursuant to the procedures contained in 24 CFR Part 58. Reimbursement for costs incurred pursuant to a letter to proceed will be dependent upon HUD approval of the application and shall not be based upon a percentage of the grant. Costs incurred prior to notification of grant approval or issuance of a letter to proceed by NCDC are not eligible for assistance under this Section.

(g) *Program Amendments.* (1) Recipients shall obtain prior NCDC approval for all program amendments, including the reprogramming of funds, for which approval is required by the grant agreement, and cost monitoring system.

(2) Where an amendment proposes one or more new activities or projects, the amendment shall be submitted on the forms used, and shall contain all the information required, for an original application. Applicants shall con-

sult with NCDC as to the form and substance of documentation required for amendments which do not propose new activities or projects.

(h) *Program Management.* Program management and performance reporting shall be accomplished within the framework of NCDC New Community project management, including the financial and physical progress reports required by NCDC administrative procedures and the cost monitoring system which NCDC has developed specifically for grants pursuant to this Section. Recipients under this Section are not required to submit an Annual Performance Report pursuant to section 570.906.

(i) *Exceptions to Regulations.* (1) The provisions of Subpart J, Grant Administration, shall be applicable to recipients, except that a community association or private developer recipient eligible under Section 570.403(b)(2) is not required to comply with the competitive bidding requirements of subsections 3(c)(5), (6) and (8) of Attachment O "Procurement Standards" of OMB Circular No. A-102 Revised (42 FR 45828), which is incorporated in Section 570.507.

(2) The provisions of Subpart K, Other Program Requirements, shall be applicable to recipients, except as follows:

(i) A community association or private developer recipient eligible under Section 570.403(b)(2) is not a "state agency" under Section 101(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and is not subject to the provisions of section 570.602(a), (b) and (c), which concern relocation and real property acquisition policies and requirements.

(ii) A community association or private developer eligible under Section 570.403(b)(2) is not subject to the provisions of Section 570.608 regarding the Hatch Act.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., November 14, 1978.

ROBERT C. EMBRY, JR.,  
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-35695 Filed 12-27-78; 8:45 am]



THURSDAY, DECEMBER 28, 1978

PART III



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**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**Office of Assistant  
Secretary for Housing—  
Federal Housing  
Commissioner**

■

**SPECIAL PROCEDURES  
FOR MODERATE  
REHABILITATION  
PROGRAM**

**Section 8 Housing Assistance  
Payments Program, Existing  
Housing**

Registered  
Federal  
Property



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENTOffice of Assistant Secretary for Housing,  
Federal Housing Commissioner

[24 CFR Part 882]

[Docket No. R-78-592]

SECTION 8—HOUSING ASSISTANCE  
PAYMENTS PROGRAM—EXISTING HOUSINGSpecial Procedures for Moderate Rehabilitation  
Program

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

**SUMMARY:** The Department is proposing to amend the Section 8 Existing Housing Program Regulations to establish policies and procedures for a new Moderate Rehabilitation Program to provide for the upgrading of existing housing units to meet the Housing Quality Standards and/or for the repair of existing units to prevent the imminent failure of major building systems or components.

**DATES:** Written comments and suggestions must be received on or before January 29, 1979.

**ADDRESS:** Please send comments and suggestions, which should include a reference to the docket number and date of publication, to: Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-7603. This is not a toll free number.

FOR FURTHER INFORMATION  
CONTACT:

Cheryl D. Patton, Office of Assisted Housing Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-5380. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** The Moderate Rehabilitation Program is designed to encourage rehabilitation through the Section 8 Existing Housing Program by providing more financial incentives while retaining the simplicity and minimal federal involvement associated with the Existing Housing Program. Some rehabilitation is already being achieved in the Existing Housing Program; however, this rehabilitation usually is being accomplished in market areas where the supply of standard housing is limited or the rehabilitation consists of only minor upgrading of basically sound housing.

It is estimated that at least 2.7 million rental units occupied by Lower-Income Families have deficiencies re-

quiring a moderate level of upgrading. Approximately 85 percent of these units are in buildings of fewer than 20 units. The Moderate Rehabilitation Program will encourage the rehabilitation of these units and thereby improve the housing stock. Further, it will make these newly rehabilitated units available to low and moderate income households.

Under the Moderate Rehabilitation Program, an Owner will agree to rehabilitate a property in accordance with the program's requirements. In return, the Owner will be assured a rent which may be as high as 120 percent of the Existing Housing Fair Market Rents for a period of up to 15 years, provided an Eligible Family is living in the property and the property is maintained in a decent, safe and sanitary condition.

The program will be administered by Public Housing Agencies including State Housing Finance and Development Agencies, where appropriate, who will provide technical assistance to Owners including: initial inspections to determine the work that needs to be accomplished to bring the units up to the Housing Quality Standards; detailed work write-ups; cost estimates; feasibility analyses; assistance in securing financing; inspections during rehabilitation; and final inspections to determine if work was accomplished in accordance with the write-ups. When appropriate, the PHA will contract with the local agency administering a Section 312 Program of Community Development Block Grant rehabilitation program or other entity with rehabilitation expertise to provide this technical assistance to the Owners.

In addition to these functions, the PHA will be responsible for outreach to Owners and Lower-Income Families and will perform the tenant-related functions normally performed in the Existing Housing Program. The Owner will maintain the rights of tenant selection and eviction as provided in the Existing Housing Program.

The program has been discussed with numerous national housing organizations which will be affected by it and the regulations reflect many of their concerns and suggestions on how the program should operate. The regulations are intended to be sufficiently flexible to allow for efficient program operation in a variety of communities.

The following is a discussion of the major program policies being proposed:

1. Moderate Rehabilitation is defined as the rehabilitation of a residential property involving a minimum expenditure of \$2000 per unit in structures containing 12 or fewer units or

\$1000 per unit in structures containing more than 12 units which will:

(a) Upgrade the property to Decent, Safe and Sanitary condition to comply with the Housing Quality Standards, from a condition requiring at least minor repairs or the cure of an accumulation of deferred maintenance (improvements being of a non-luxury nature); or

(b) Prevent the imminent failure of major building systems or components.

The rehabilitation is expected to average approximately \$3000 per unit but will vary depending upon the terms of financing available. It was determined that an Owner wishing to perform less than the minimum amount of rehabilitation required should not be entitled to the assurance of assistance tied to the unit(s) for up to 15 years. There is no maximum placed on the amount of rehabilitation allowable under the program since the rental increase attainable should effectively limit the amount of rehabilitation which it would be financially feasible to undertake. The PHA will make the determination as to whether the Owner should participate in the Moderate Rehabilitation Program. Should the amount of rehabilitation be too low the Owner will be encouraged to participate in the Existing Housing Program; if the amount of rehabilitation is too high to be feasible with the Moderate Rehabilitation rent limits, the Owner will be encouraged to apply to the HUD Field Office for the Section 8 Substantial Rehabilitation Program.

2. Owners will be entitled to vacancy payments of up to 80 percent of the contract rents for up to 60 days when a vacancy exists between execution of the HAP Contract and initial occupancy or when a tenant vacates a unit, provided the Owner is making every effort to fill the vacancy.

3. A new Fair Market Rent schedule is established for Moderate Rehabilitation which is equal to 120 percent of the Existing Housing Fair Market Rent Schedule. The Moderate Rehabilitation Fair Market Rent can only be exceeded upon prior approval of the HUD Field Office Manager and only after rehabilitation has commenced and unexpected repairs are necessary which will warrant a higher rent. The Contract Rent will be established by taking a base rent (established by the PHA) and adding the actual or imputed monthly per unit debt service costs for the rehabilitation plus any temporary relocation costs, provided that this calculation does not result in a rent which exceeds the Fair Market Rent (minus any applicable allowance for utilities).

The Department is interested in avoiding inflated rents and unneces-

sary rehabilitation. Comments are therefore being solicited for possible incentives to PHAs and/or Owners to keep costs and Contract Rents down. The Department intends to achieve these objectives, in part, by authorizing PHAs to rehabilitate additional units under the program with the funds they save by negotiating Gross Rents below the Fair Market Rents. Comments concerning the viability of this approach and other possible cost containment methods would be appreciated.

4. The ACC will be for a term of 17 years and the HAP Contract may be for a maximum term of 15 years. The term of the HAP Contract will be determined by the Owner and may be from 5 to 15 years, in 5 year increments.

5. Annual adjustments to the Contract Rents will be based on the annual adjustment factors which are published by HUD for the Section 8 New Construction and Substantial Rehabilitation Programs. Any rent increases, however, must be determined reasonable by the PHA.

6. Since this is a program of moderate rehabilitation which we assume will average approximately \$3000 per unit, there should be little need for displacement, even on a temporary basis since most work should be able to be accomplished with tenants in residence. There is no requirement that ineligible tenants be forced to move; however, a HAP Contract will not be executed for those units occupied by ineligible families. Therefore, since ineligible families may remain in place, the only permanent displacement anticipated would be in residences where the Family is overcrowded in the unit and a suitable size unit in the project is not available, or in unforeseen circumstances.

HUD regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as modified in these regulations will apply to any Lower-Income Family displaced under the Moderate Rehabilitation Program. The PHA will have responsibility for ensuring that the appropriate payments are provided to displacees and will provide all services necessary to permanently displaced and temporarily relocated Families. A Section 8 Existing Housing Program Certificate of Family Participation will be considered adequate rental assistance to a displaced Family under this program, provided that the Family voluntarily selects a suitable unit that meets all requirements of the Existing Housing Program and the Owner of the unit is willing to participate in the Existing Housing Program. The local government must agree to make any necessary payments to permanently displaced Families who

cannot be assisted through the Existing Housing Program, and will be required to sign off on the initial application and the administrative plan. The Owner must agree to make any necessary payments to Families temporarily relocated; however these costs may be included in the establishment of Contract Rents. Owner-occupants and over-income families will not be eligible for permanent or temporary relocation benefits. However, the local government may propose to assist over-income families permanently displaced and/or temporarily relocated from a building being rehabilitated under the program. Should the local government agree to provide over-income families with benefits similar to those provided to eligible Families, the PHA's application will be given a preference in the Field Office's selection among approvable applications.

7. Owners under the Moderate Rehabilitation Program will be subject to the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968, the National Environmental Policy Act, the Clean Air Act, the Federal Water Pollution Control Act, the Davis-Bacon Act (for projects with 9 or more assisted units), Section 504 of the Rehabilitation Act of 1973, the National Historic Preservation Act, (Public Law 89-665), the Archeological and Historic Preservation Act of 1974, Executive Order 11593 on Protection and Enhancement of the Cultural Environment and the Flood Disaster Protection Act of 1973. Since the Program requires an Agreement prior to the commencement of rehabilitation the Owner must comply with all federal requirements specified above 8. The Owner may utilize any type of public or private rehabilitation financing or refinancing that the Owner considers appropriate. It is anticipated that many Owners will finance the rehabilitation through local or state rehabilitation loan programs since the more favorable terms offered by these agencies will allow the Owner to undertake more rehabilitation. Since some Owners may propose to accomplish only \$2000 of rehabilitation, they may not need to obtain a rehabilitation loan but rather may finance the rehabilitation through personal credit; there is no requirement that the Owner finance through a rehabilitation loan. Other types of financing that an Owner might use include conventional loans from private lending institutions or credit unions or loans insured under Title I of the National Housing Act, or Title V of the Housing Act of 1949 (Farmer's Home Administration Programs).

Regarding the origination and marketing of rehabilitation loans under this program, the Department is requesting comments on the willingness of mortgagees to originate such loans for possible inclusion in Government National Mortgage Association (GNMA) mortgage backed securities pools and for purchase for their own portfolios.

9. The responsibilities of a PHA administering the program are being changed significantly and the administrative fee and reimbursement for preliminary costs will be adjusted accordingly. The analysis of the appropriate administrative fee and allowance for preliminary costs will take into account economies of scale in order not to discourage PHAs from selecting Owners of only a small number of units. In addition to most of the functions required of a PHA in the Existing Housing Program, the PHA must perform or subcontract with an entity to perform the following functions:

(a) Public solicitation of Owners to rehabilitate units and lease them to Eligible Families and development of working relationships with landlords, contractors, lending institutions and appropriate associations and groups;

(b) Explanation of program procedures to Owners and all interested groups;

(c) Assessment of the level of rehabilitation necessary and determination of whether the Owner should participate in the Moderate Rehabilitation Program or whether the Existing or Substantial Rehabilitation Programs would be more appropriate;

(d) Provision to Owners of technical assistance in the rehabilitation process, where necessary, including inspection of units to determine the work necessary to bring the units up to program standards, preparation of work write-ups, preparation of cost estimates, preparation of feasibility analyses, financial counseling including assistance in obtaining loans, determination of which energy-conserving improvements will be cost effective, and assistance in hiring a contractor and overseeing the rehabilitation;

(e) Determination of appropriate Contract Rents, including review and approval of the Owner's certification of actual rehabilitation and temporary relocation costs and interest rates on the rehabilitation loan;

(f) Provision to each participating Family of basic information on the operation of the Section 8 Moderate Rehabilitation Program, landlord and tenant responsibilities, and basic program rules, including the fact that the subsidy is tied to the unit and Families are not guaranteed that they will continue to receive housing assistance if they move voluntarily;



(g) Review of proposed leases and/or assistance to Owners in the development of lease forms;

(h) Inspections: (i) prior to the rehabilitation to determine the work that must be accomplished to bring the units up to the Housing Quality Standards, or to prevent imminent failure of major building systems or components, (ii) during rehabilitation to ensure that the work is being accomplished in accordance with the work write-up, (iii) after the rehabilitation is complete and prior to leasing to assure that the work specified in the Agreement was accomplished, and (iv) at least annually to determine that the units are maintained in Decent, Safe, and Sanitary condition; and notifications to Owners and Families (where appropriate) of PHA determinations;

(i) Monitoring of the Owner and contractor to ensure that all equal opportunity requirements and Davis-Bacon requirements (where applicable) are observed;

(j) Explanation of program benefits to occupants of units to be rehabilitated and provision of information and direct assistance in finding suitable alternative housing to any displaced Lower-Income Families; and

(k) Ensuring that proper payments are made to Lower-Income Families temporarily relocated or permanently displaced under the program.

A PHA without rehabilitation experience should not propose to develop that expertise but should subcontract with an experienced entity to perform the rehabilitation-related functions if such an entity is available in the locality. Where an experienced and competent rehabilitation entity is not available in the locality, the PHA may propose to hire staff to perform the rehabilitation related functions required by the program. Since many PHAs do not have expertise in rehabilitation, it is anticipated that they will subcontract with the local agency administering the Section 312 program or a CDBG rehabilitation program to perform many of those functions.

10. The Owner's responsibilities have been expanded to include performing the rehabilitation specified in the Agreement, complying with all federal requirements mentioned in paragraph 7 above, and meeting all other requirements of the Agreement. Owners may fill vacancies by selecting Families on the PHA waiting list or establishing their own waiting list.

11. Contract and budget authority for existing housing, including Moderate Rehabilitation, will be distributed to Field Offices on a "fair share" basis.

12. In addition to the regular application requirements of the Existing Housing Program, an application for Moderate Rehabilitation must include:

(a) A description of the rehabilitation expertise of the PHA or the identity and experience of the PHA's subcontractor.

(b) A statement as to whether the program will be targeted to a specific neighborhood. If the PHA plans to target, a description of the neighborhood and other public and private improvements underway and/or planned for the neighborhood must be provided.

(c) A statement as to the types of financing available and expected to be used in the program (for example, Community Development Block Grant loan programs, Neighborhood Housing Services loan programs, etc.).

(d) A relocation plan, which is part of the administrative plan, detailing how displacement will be minimized, and how relocation policies will be administered and monitored. If the PHA proposes to subcontract with an entity experienced in relocation, this entity must be specified.

(e) A letter of endorsement from the chief executive officer of the local government indicating local support of the application and agreeing to make any necessary payments to permanently displaced Families. The chief executive officer must also sign off on the administrative plan if it is not submitted with the initial application endorsed by the local government.

13. In selecting among approvable applications, ranking will be based upon the Field Office's assessment of which applications have the best combination of the following:

(a) The rehabilitation expertise of the PHA and/or its subcontractor;

(b) The availability of assisted rehabilitation financing;

(c) The concentration of the program in a specific neighborhood where concentrated public and/or private revitalization activities are underway or planned to complement the Moderate Rehabilitation Program. (This criteria will only apply in metropolitan cities and urban counties.);

(d) The PHA's experience with the Section 8 Existing Housing Program and/or the PHA's overall administrative capability;

(e) The potential for achieving, as quickly as possible, rehabilitation and leasing of the units under the program;

(f) Overall feasibility of the proposed program; and

(g) The local government's commitment to provide relocation benefits to over-income families permanently displaced and/or temporarily relocated from buildings being rehabilitated under the program.

14. Taking into consideration the additional time necessary for leasing due to the rehabilitation required, the leasing period for 100 units or more

has been established at 18 months rather than the 12 months specified in the Existing Housing Program.

15. In addition to public notice requirements for Lower-Income Families, the PHA must issue a public notice to Owners that the program is available and specify where and when Owners may submit proposals.

16. Sixty days prior to completion of rehabilitation or when rehabilitation is commenced, whichever is later, if vacancies exist, the PHA will send Eligible Families to the Owner for selection or will determine the eligibility of Families selected from the Owner's waiting list. In either case, the Owner has the responsibility for tenant selection.

17. Before rehabilitation is begun, the PHA and the Owner will enter into an Agreement. This Agreement will specify the work that must be accomplished, deadline dates for the commencement and completion of the rehabilitation, the contract rents which will be paid upon completion, a date for final inspection, and the term of the Housing Assistance Payments Contract.

18. Upon completion of the rehabilitation and the Owner's certification that the rehabilitation has been completed in accordance with the Agreement and all applicable Federal, State, and local requirements, the PHA must conduct a final inspection and either accept or reject the unit(s). The Owner must also certify to the actual costs and the interest rate on any rehabilitation loan. Once the unit(s) has been accepted, the costs verified, and any adjustments made to the Contract Rents, a Housing Assistance Payments Contract will be executed by the PHA and Owner.

19. If an Owner fails to lease to Eligible Families, the PHA may amend the Contract to reduce the number of units which the PHA will assist. The number of units in the Contract will never be reduced below the number of units leased or available for leasing by Eligible Families, plus 10 percent or one unit, whichever is greater. If, however, the Owner has only one unit under Contract, the PHA may cancel the Contract if the Owner fails to lease to Eligible Families.

20. In selecting Families for participation in the program, those residing in the unit(s) at the time of rehabilitation will be automatically selected if eligible. Ineligible families will not be forced to move; however, the HAP Contract will only include units occupied by or available for occupancy by Eligible Families. Families will be selected for vacant units by the Owner from either the PHA's Existing Housing Program waiting list or from the Owner's separate waiting list. If the PHA proposes to concentrate the pro-

gram in a specific neighborhood, the PHA may establish a preference for applicants currently residing in that neighborhood.

21. When briefing Families selected to participate in the program, the PHA must stress that the subsidy is tied to the unit and the Family will be required to occupy a unit being moderately rehabilitated under the program. The PHA must also explain the options available to the Family should they be forced to move or should they wish to move.

22. HUD will perform reviews of each PHA's Moderate Rehabilitation program in order to determine if the quality of the rehabilitation is satisfactory, rehabilitation costs are reasonable, rents are reasonable, and other program requirements are being met. If deficiencies are identified, the PHA will not be allowed to enter into additional HAP Contracts until these deficiencies have been corrected.

It is the finding of this office that the Moderate Rehabilitation Program will not constitute a major federal action having actual or potential impact on the environment and that the procedures of the National Environmental Policy Act of 1969 are not applicable. A copy of this finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address specified above.

Accordingly, 24 CFR, Part 882 is proposed to be amended as follows by adding new Subparts D and E:

#### Subpart C—Reserved

#### Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

|         |                                                               |
|---------|---------------------------------------------------------------|
| Sec.    |                                                               |
| 882.401 | Applicability and scope.                                      |
| 882.402 | Definitions.                                                  |
| 882.403 | Housing quality standards.                                    |
| 882.404 | Vacancies.                                                    |
| 882.405 | Initial contract rents.                                       |
| 882.406 | Term of ACC, lease, and housing assistance payments contract. |
| 882.407 | Rent adjustments.                                             |
| 882.408 | Relocation.                                                   |
| 882.409 | Other federal requirements.                                   |
| 882.410 | Financing.                                                    |
| 882.411 | Subcontracting of owner responsibilities.                     |

#### Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

|         |                                                                 |
|---------|-----------------------------------------------------------------|
| Sec.    |                                                                 |
| 882.501 | Distribution of funds.                                          |
| 882.502 | Invitations for moderate rehabilitation program applications.   |
| 882.503 | Submission of applications.                                     |
| 882.504 | Processing of applications.                                     |
| 882.505 | Annual contributions schedule of leasing.                       |
| 882.506 | Public notice to owners.                                        |
| 882.507 | Assistance to owners.                                           |
| 882.508 | Agreement to enter into a housing assistance payments contract. |
| 882.509 | Rehabilitation period.                                          |

|         |                                                                                  |
|---------|----------------------------------------------------------------------------------|
| Sec.    |                                                                                  |
| 882.510 | Completion of rehabilitation.                                                    |
| 882.511 | Execution of housing assistance payments contract.                               |
| 882.512 | Overcrowded and under occupied units.                                            |
| 882.513 | Adjustment of allowance for utilities and other services.                        |
| 882.514 | Eviction.                                                                        |
| 882.515 | Reduction of number of contract units for failure to lease to eligible families. |
| 882.516 | Public notice to lower-income families; waiting list.                            |
| 882.517 | Family participation.                                                            |
| 882.518 | Reexamination of family income and composition.                                  |

#### Subpart C—[Reserved]

#### Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

##### § 882.401. Applicability and Scope.

(a) *General.* This Subpart and Subpart E set forth: (1) the policies and procedures for requests made by Public Housing Agencies (PHAs) for approval by HUD of a Moderate Rehabilitation Program, and (2) the procedures to be used by PHAs in initiating and administering a Moderate Rehabilitation Program.

(b) *Eligible applicants.* PHAs, including HFDAs, eligible to participate in the program are those who (1) have the ability to operate a rehabilitation program, (2) are willing to subcontract with a local public or private agency with rehabilitation expertise, or (3) where an entity with rehabilitation expertise is not available, will develop the capability to operate a rehabilitation program.

(c) *Eligible and ineligible properties.* Any structure requiring and suitable for moderate rehabilitation as defined in Section 882.402 so as to provide rental housing for families eligible for assistance under the Section 8 program is eligible for inclusion under the Moderate Rehabilitation Program, except housing: (1) which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under 24 CFR, Part 800, 801, 880, 881, 883, 885 or 886, or (2) which is owned by the PHA administering the ACC under this Part, or (3) which is a subsidized HUD-insured project, or (4) which is a project with a HUD-held mortgage or is a HUD-owned project. Existing structures of various types may be appropriate for this program including single-family houses, multi-family structures and Independent Group Residences. High rise elevator projects for Families with children may not be utilized unless HUD determines there is no practical alternative. Mobile homes may not be utilized in this program. No Section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives will be considered as

rental housing for purposes of this program.

(d) *Applicability of Subparts A, B and C.* Sections 882.102 (Definitions), 882.109 (Housing Quality Standards), 882.112 (Security and Utility Deposits), 882.113 (Establishment of Income Limit Schedules; 30 Percent Occupancy by Very Low-income Families), and 882.118 (Responsibility of the Family) of Subpart A and Sections 882.201 (Allocations of Contract Authority to Field Offices), 882.202 (Determination of Number and Types of Units to be Assisted), 882.215 (Eviction), 882.216 (Inapplicability of Low-Rent Public Housing Model Lease and Grievance Procedures), and 882.217 (HUD Review of Contract Compliance) of Subpart B are applicable to the Moderate Rehabilitation Program. Other sections which have been modified for this program are repeated or referenced in Subparts D and E with appropriate amendments. Provisions of Subpart C, Administration of Program by Contract Administrator on Behalf of HUD, which will soon be issued as a proposed rule, may apply to Subparts D and E.

##### § 882.402. Definitions.

In addition to the definitions set forth in Section 882.102, the following will apply:

*Agreement to Enter Into Housing Assistance Payments Contract ("Agreement").* A written agreement between the Owner and the PHA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

*Moderate Rehabilitation.* The rehabilitation of a residential property involving a minimum expenditure of \$2000 per unit in structures containing 12 or fewer units or \$1000 per unit in structures containing more than 12 units, which will:

(a) Upgrade the property to Decent, Safe and Sanitary condition to comply with the Housing Quality Standards, from a condition requiring at least minor repairs or the cure of an accumulation of deferred maintenance (improvements being of a non-luxury nature); or

(b) Prevent the imminent failure of major building systems or components.

Where the property contains nine or more units to be assisted, prevailing wages must be paid for all rehabilitation work performed and other Davis-Bacon requirements must be met.

##### § 882.403. Housing quality standards.

In addition to the standards set forth in Section 882.109, the following will apply:



(a) *Energy Efficiency, Performance Requirement.* Appropriate energy conserving improvements such as insulation, storm doors and windows and caulking must be accomplished by the Owner as part of the rehabilitation under this Part, provided that these improvements are determined by the PHA to be cost-effective over the 15 year term of the HAP Contract. (See Sec. 882.507(d).)

#### § 882.104. Payments for vacancies.

(a) *Vacancies from execution of contract to initial occupancy.* If a Contract unit which has been moderately rehabilitated in accordance with this Subpart is not leased as of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has complied with Section 882.509(d) and (e)(2); (2) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units; and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(b) *Vacancies after initial occupancy.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner may receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, resulted in more than the Contract Rent, the excess must be payable to the PHA or as the PHA may direct. The Owner will not be entitled to any payment under this paragraph (b)(1) unless the Owner: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, and (ii) has taken and continues to take all feasible actions specified in paragraphs (a)(2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under paragraph (b)(1) of this section unless the PHA determines that the Owner complied with all requirements of Section 882.215 and all applicable State and local laws.

(c) *Prohibition of double compensation for vacancies.* The Owner will not be entitled to housing assistance pay-

ments with respect to vacant units under this section if the Owner is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act of 1974 or payments under Section 882.112 (Security and Utility Deposits)).

#### § 882.405. Initial contract rents.

(a) *Fair market rent limitation.* The Gross Rent for any Moderate Rehabilitation unit approved pursuant to 882.508(a)(3) must not exceed the Moderate Rehabilitation Fair Market Rent applicable to the unit on the date that the Agreement is executed except that changes may be made in the Contract Rent subsequent to the signing of the Agreement which result in Gross Rents which exceed the Moderate Rehabilitation Fair Market Rent as provided in paragraph (c) of this section. The Fair Market Rent Schedule for Moderate Rehabilitation will be 120 percent of the Existing Housing Fair Market Rent Schedule in effect when the Agreement is executed.

#### (b) *Determination of contract rents.*

(1) The PHA must establish a base rent for each unit. This base rent will be the average rent charged for the unit during the 18 months preceding the date of the Agreement plus an adjustment for inflation. This adjustment must not exceed the amount obtained by application of the annual adjustment factors established by HUD (see 882.407(a)(1)). If, however, the PHA determines that the rent established by this formula is not a reasonable rent, then the PHA must establish a reasonable rent for that unit to be used as the base rent which may be higher or lower than the formula-established base rent. The PHA must certify for each unit for which it enters into an Agreement that the base rent for the unit is reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance services of the unit. If the base rent exceeds the rent being charged for the unit before rehabilitation by more than 10 percent, the PHA must justify the excess in writing.

(2) Taking into consideration the cost of the rehabilitation proposed in the Agreement and the cost of any necessary temporary relocation payments to be made by the Owner, the potential fifteen year term of the HAP Contract, and the interest rate at which the Owner proposes to secure his rehabilitation loan (the HUD-PHA maximum interest rate for multi-family housing plus ¼ percent Mortgage Insurance Premium will be used

where the Owner does not secure a loan), the PHA must determine the monthly per unit cost to the Owner of repaying a rehabilitation loan over a 15 year term on the proposed improvements.

(3) The Contract Rent for the unit must be the lesser of (i) the base rent as established in paragraph (b)(1) of this section plus the monthly cost of amortization of the rehabilitation loan as established in paragraph (b)(2), or (ii) the Moderate Rehabilitation Fair Market Rent for that unit size (see paragraph (a) of this section), minus any applicable Allowance for Utilities and Other Services attributable to the unit.

(c) *Changes in contract rents.* (1) The Contract Rents established pursuant to paragraph (b) will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items are discovered which must be performed to bring the unit(s) to program standards, which were not listed in the work write-up prepared or approved by the PHA, and which will require additional expenditures which would make the rehabilitation infeasible at the Contract Rents established in the Agreement. Under these circumstances, the PHA will:

(A) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work.

(B) Recompute the Contract Rents, within the limits specified in paragraph (c)(4) of this section, based upon the revised cost estimate, and

(C) Prepare and execute an amendment to the Agreement stating the additional work required and the revised Contract Rents.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement.

(iii) When the actual interest rate of the rehabilitation loan differs from that anticipated in the calculation of Contract Rents for the Agreement.

(iv) When the actual relocation payments made by the Owner to temporarily displaced Families varies from the cost estimated in the calculation of Contract Rents for the Agreement.

(2) Should changes occur as specified in (ii), (iii) or (iv) (either an increase or decrease), the PHA will recalculate the Contract Rents in accordance with paragraph (b) of this section and amend the Contract to reflect the revised rents.

(3) The PHA must review and approve the Owner's certification that the rehabilitation costs, temporary relocation costs and interest rate on

which the Contract Rents are based are the actual costs incurred and interest rate obtained by the Owner.

(4) In establishing the revised Contract Rents, the PHA must determine that the resulting Gross Rents do not exceed the Moderate Rehabilitation Fair Market Rent. The Fair Market Rent may only be exceeded when the PHA determines in its calculations specified in paragraph (c)(1)(i) of this section that it will be necessary for the revised Gross Rent to exceed the Moderate Rehabilitation Fair Market Rent. Should this determination be made, the PHA may not execute a revised Agreement until it receives HUD Field Office approval of such an exception. The HUD Field Office may approve revised Gross Rents which exceed the Fair Market Rents by up to 10 percent for reasons specified in paragraph (c)(1)(i) upon proper justification by the PHA of the necessity for the increase.

#### § 882.406. Term of ACC, lease, and housing assistance payments contract.

(a) *Term of ACC.* The term of the ACC will be for seventeen years.

(b) *Term of Housing Assistance Payments Contract.* The Contract for any unit moderately rehabilitated in accordance with Subparts D and E may be for an initial term of not more than five years, with provision for automatic renewal (unless agreed otherwise) for additional terms of not more than five years each, for a total Contract term, including renewals, which must not exceed fifteen years or the remaining term of the ACC, if less.

(c) *Term of Lease.* The term of the Lease for each unit must be for not less than one year nor more than three years.

(d) *Renewals of Contract and Lease.* Any renewal of the Contract and/or Lease term for any unit must in no case extend beyond the shorter of the remaining term of the ACC pertaining to the Contract and the Lease or 15 years from the date of the initial Contract.

#### § 882.407. Rent adjustments.

(a) Contract Rents will be adjusted as provided in paragraphs (a)(1) and (2) of this section upon request to the PHA by the Owner, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. Subject to the foregoing, adjustments of Contract Rents will be as follows:

(1) *Annual Adjustments.* The Annual Adjustment Factors which are published annually by HUD (see Schedule C, 24 CFR Part 888) will be utilized. On each anniversary date of the Contract, the Contract Rents may be adjusted by applying the applicable

Annual Adjustment Factor most recently published by HUD. These increased Contract Rents must then be examined in accordance with paragraph (b) of this section and may be adjusted accordingly. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case may the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(2) *Special Adjustments.* A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates, assessments and utilities not covered by regulated rates, may be recommended for approval by the PHA but only if and to the extent that the Owner clearly demonstrates that these general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner must submit financial information to the PHA which clearly supports the increase. For projects of more than twelve units, the Owner must submit audited financial information.

(b) *Overall Limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2)). However, this limitation should not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that differences existed with respect to the initial Contract Rents.

#### § 882.408. Relocation for section 8 moderate rehabilitation.

(a) *Minimizing Displacement and Temporary Relocation.* Moderate rehabilitation by its nature of not involving substantial renovation should not, except in unusual circumstances, require the permanent displacement of families. Additionally, temporary relocation should be minimal since much of the work should be accomplished with tenants in residence. To further minimize displacement and relocation PHAs may propose in their administrative plan to exclude the selection of projects where permanent displacement or temporary relocation will be necessary. Although displacement and temporary relocation should be minimal, some relocation will be unavoidable and benefits to displacees must be provided as specified in this section.

(b) *Applicability of Uniform Act.* Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) applies to certain displacements occurring as a result of a PHA's acquisition or order to vacate real property, issued in connection with acquisition, for a project. HUD regulations governing displacements under the Uniform Act are set forth at 24 CFR Part 42. Any family or individual, occupying a unit to be rehabilitated pursuant to this Subpart and who meets the definition of a "displaced person," as defined in 24 CFR 42.20(d), must be provided relocation payments and assistance in accordance with 24 CFR Part 42, as modified by paragraphs (c) through (j) of this section including the obligation placed on the local government.

(c) *Tenants Displaced by Private-Owner Rehabilitation.* Although the Uniform Act does not apply to the displacement of tenants as a result of rehabilitation by a private owner for a Section 8 project, HUD has determined that any Lower-Income Family or individual that is a tenant (not an owner-occupant) occupying a unit to be rehabilitated pursuant to this Subpart on the date the PHA notifies the Owner that the proposal is approvable (see Section 882.507(b)) and who is thereafter required to move, will be eligible for relocation payments and assistance to be determined on the same basis as provided by 24 CFR Part 42, as modified by paragraphs (d) through (j) of this section, as if the tenant were a "displaced person" within the meaning of the Uniform Act. For purposes of the regulations at 24 CFR Part 42, the PHA notification that the Owner's proposal is approvable will be deemed to be the "initiation of negotiations."

(d) *Notice of Right to Continue in Occupancy.* No later than 30 days after the PHA notification of the approval of the proposal the PHA must furnish each residential tenant, occupying a unit to be rehabilitated under the program who will not be displaced, a written notice of the tenant's right to continue in occupancy. The notice must contain the following conditions:

(1) The tenant must have the right to lease and occupy a decent, safe, and sanitary dwelling which is either the current dwelling or a comparable dwelling located within the same building or nearby building located on the same site, for a continuous period of at least four years. The four-year period will begin on the date of PHA notification of the approval of the proposal, or the date the dwelling is placed in decent, safe, and sanitary condition, or the termination date of any required temporary relocation, whichever is later.



(2) The amount of rent payable by the tenant must be determined in accordance with 24 CFR Part 889 and any necessary subsidy must be provided pursuant to this Subpart.

(3) The tenant must not be required to move from the dwelling units other than for cause unless the move is necessary to permit rehabilitation. If a move is required:

(i) Not more than one temporary relocation by the tenant may be required;

(ii) The temporary relocation, if any, must not exceed twelve months in duration;

(iii) A decent, safe, and sanitary dwelling must be available to the tenant for the period of any temporary relocation; and

(iv) The Owner must pay actual reasonable out-of-pocket expenses, including any moving costs or increase in monthly housing costs, incurred by any "eligible" tenant in connection with the move, any temporary relocation, or both.

(4) If the tenant is required to vacate the dwelling during the four-year period for any reason other than for cause, or if any of the commitments to the tenant under this notice of right to continue in occupancy are not met, the tenant will automatically be deemed to have been issued a notice of displacement as described in paragraph (e) of this section and to be entitled to relocation payments and other relocation assistance available to displaced persons provided under 24 CFR Part 42, as modified by this section.

(e) *Notice of displacement.* Not later than 30 days after the PHA notification of the approval of the proposal, the PHA must issue a written notice of displacement to each residential tenant occupying a unit to be rehabilitated under the program who will be displaced. The notice must state that if the tenant moves or moves personal property from the property on or after the date of PHA notification of approval of the proposal, the tenant will be entitled to certain relocation payments and other assistance which must be described, including the maximum allowable dollar amount or range of each payment for which the tenant will apparently be eligible, the conditions of eligibility, and the procedures for obtaining the payment(s).

(f) *Automatic notice of displacement.* If a tenant is not issued a written notice of displacement or a notice of right to continue in occupancy within 30 days after the date of the PHA notification of the approval of the proposal, the tenant will be deemed to have been issued a notice of displacement effective on the date of the PHA notification of the approval of the proposal.

(g) *Tenants Continuing in Occupancy.* The PHA must take such steps as may be necessary to insure that no tenants who continue in occupancy under the provisions of this section are subjected to an unreasonable change in the character of their immediate environment without being given the opportunity to move and qualify for relocation assistance as a displaced person. For example, an elderly tenant may not be subjected without alternatives to a sharp increase in the number of children occupying nearby units. Additionally, in determining whether temporary relocation is necessary to facilitate the rehabilitation, the Owner and PHA must consider any hardships likely to result if the Family occupies the property during the rehabilitation.

(h) *Section 8 Assistance to Tenants Permanently Displaced by Private Owner.* The PHA must offer a residential tenant of a unit to be rehabilitated under the program who has been or will be permanently displaced by an Owner a Certificate of Family Participation under the Existing Housing Program (Subparts A and B). If the displaced Family moves to a replacement rental dwelling unit which meets the requirements of the Existing Housing Program and the landlord of the replacement rental dwelling unit is willing to participate in that program, the rental assistance responsibilities of the local government will be determined to be met. Should the Family not move to a suitable unit under the Existing Housing Program or should the PHA not have a Certificate available for the Family, a rental assistance payment and other benefits described in 24 CFR Part 42 must be provided.

(i) *Manner of Notices.* Any notice required under this section must be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested.

(j) *Responsibility for Relocation Payments and Assistance.*

(1) The PHA will have the administrative responsibility for assuring that appropriate relocation payments consistent with 24 CFR Part 42 as modified by this section are made to displaced or temporarily relocated Families and will be directly responsible for providing all services specified in 24 CFR Part 42.

(2) The provision of payments to Families permanently displaced, where the Family cannot be assisted as specified in paragraph (h), will be the responsibility of the local government. Unless the local government agrees, in writing, to assume responsibility for providing permanent relocation payments from funds other than those provided under this program, an application for Moderate Rehabilitation from the PHA will not be consid-

ered approvable. In addition, since a HAP Contract will not be executed on a unit occupied by an over-income family, the local government will not be required to provide relocation benefits to these families. However, the local government may propose to provide assistance similar to that provided for Eligible Families to over-income families being permanently displaced and/or temporarily relocated from units in buildings where units are being rehabilitated under the Moderate Rehabilitation Program. Should the local government agree to provide relocation benefits to over-income families, this agreement must be specified in the administrative plan submitted by the PHA and signed by the chief executive officer. Additionally, should the local government agree to provide this assistance, the PHA's application will receive a preference in the Field Office's selection among approvable applications.

(3) The provision of payments to Families temporarily relocated will be the responsibility of the Owner. The Contract Rent computation, as specified in Section 882.405(b), may include relocation costs; however, the Owner must make the payments. No Owner will be selected for participation in the program unless the Owner agrees, in the Agreement, to assume this responsibility.

#### § 882.409. Other Federal Requirements.

Participation in this program requires compliance with the Equal Opportunity requirements specified in 882.111 as well as the rules, regulations and requirements of the following:

- (a) Executive Order 11246;
- (b) Clean Air Act and Federal Water Pollution Control Act;
- (c) Davis-Bacon Act;
- (d) Section 504 of the Rehabilitation Act of 1973;
- (e) National Historic Preservation Act (Public Law 89-665);
- (f) Archeological and Historic Preservation Act of 1974;
- (g) Executive Order 11593 on Protection and Enhancement of the Cultural Environment;
- (h) National Environmental Policy Act of 1969; and
- (i) Flood Disaster Protection Act of 1973.

#### § 882.410. Financing.

(a) *Types.* Any type of public or private financing may be utilized.

(b) *Use of Contract as Security for Financing.* An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Part in accordance with the provisions of that Agreement or Contract.

#### § 882.411. Subcontracting of Owner Responsibilities.

Any Owner may contract with any private or public entity to perform for a fee the services required by the Agreement, Contract or Lease, provided that such contract may not shift any of the Owner's responsibilities or obligations, and provided further that no such contract may be entered into with an entity which is responsible for administration of the Agreement or Contract. If the Owner and a PHA wish to enter into a management or rehabilitation contract, they may do so provided that the Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA or by HUD or an entity acting on behalf of HUD and authorized by HUD pursuant to Subpart C of the regulations.

#### Subpart E—Special Procedures for Moderate Rehabilitation Program Development and Operation

#### § 882.501. Distribution of Funds.

(a) *Contract and Budget Authority.* The amount of contract and budget authority available for the Moderate Rehabilitation Program will be a portion of the funds available for the Section 8 Existing Housing Program.

(b) *Allocation of Funds.* (1) Contract and budget authority will be assigned to and allocated for metropolitan and non-metropolitan areas by each HUD Field Office pursuant to 24 CFR Part 891, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds.

(2) Each Field Office must announce by publication the availability of Moderate Rehabilitation contract authority and the approximate number of units which the authority will support within the Field Office's jurisdiction.

#### § 882.502. Invitations for Moderate Rehabilitation Program Applications.

(a) *Sending of Invitation.* The HUD Field Office must initiate implementation of its program with respect to Moderate Rehabilitation by sending invitations for Moderate Rehabilitation Program applications for areas in the Field Office's jurisdiction where the Housing Assistance Plan (HAP) indicates a goal for Existing Housing and where there is a supply of housing in need of and suitable for moderate rehabilitation. These invitations may solicit applications for both the Existing Housing Program and Moderate Rehabilitation Program or may request only Moderate Rehabilitation applications. These invitations must be distributed in the same manner as specified in Section 882.203(a).

(b) *Contents of Invitation.* The invitation must indicate: (1) that applications may be submitted by public

housing agencies (i.e., any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing), (2) the contract authority available and the estimated number of units the authority is expected to support, for both metropolitan and non-metropolitan areas, (3) the deadline for submission of applications (which will generally be 60 days but must be at least 15 calendar days after the date invitations are sent (see paragraph (a) of this section), (4) the fact that copies of the application, other forms, and program regulations may be obtained from the Field Office, and (5) such other basic information as the Field Office may specify. If the invitation is for both Existing Housing and Moderate Rehabilitation applications, the invitation must also contain the information specified in Section 882.203(b).

#### § 882.503. Submission of Application.

The application for a Moderate Rehabilitation Program will be submitted by a PHA to the HUD Field Office. Advice and assistance in the preparation of the application are available from the HUD Field Office.

(a) *Contents.* The application must:

(1) Indicate the types of housing (i.e., detached, walkup, elevator) likely to be utilized in the proposed project.

(2) Indicate the total number of units expected to be utilized by unit size (number of bedrooms) and the approximate number of units for occupancy by elderly, handicapped, or disabled.

(3) Demonstrate that the units requested in paragraph (a)(2) of this section are consistent with the applicable Housing Assistance Plan, as required by 24 CFR Part 891, or in the absence of such a Plan, that the proposed application is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower Income Families residing in or expected to reside in the community.

(4) Demonstrate that the applicant qualifies as a PHA and is legally qualified and authorized to participate in the Section 8 Moderate Rehabilitation Program for the area in which the program is to be carried out and include in such demonstration (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operation, and (iii) a supporting opinion from the agency counsel. If the PHA already has an ACC for an Existing Housing Project, this demonstration will not be required if the PHA submits a statement that they are qualified to participate based on the same documentation.

(5) Include a statement that the housing quality standards to be used in the operation of the program will be those set forth in Section 882.109 and Section 882.403 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation must be specified and justified. Should the PHA propose to use local code standards which are more restrictive than the Housing Quality Standards, no justification need be submitted.

(6) Include a proposed schedule specifying the number of units to be leased by quarter.

(7) Include a description of the rehabilitation expertise and experience of the PHA. If the PHA proposes to subcontract with a city rehabilitation agency or private rehabilitation entity, the PHA must specify the subcontractor and detail the subcontractor's experience in rehabilitation. A memorandum of intent between the PHA and any subcontractor specifying the obligations of each party must be submitted with the application. A PHA without rehabilitation expertise should not propose to hire staff to perform these functions but should subcontract with an experienced and qualified agency or entity if such an entity exists. Should the PHA not have the expertise or should an entity with such expertise not be available, the PHA must demonstrate how it proposes to obtain that expertise and detail the qualifications of any staff to be hired, if known, in the application.

(8) Include a description of the PHA's experience in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program including experience with the Section 8 Existing Housing Program.

(9) Indicate whether the program will be concentrated in a specific neighborhood(s). If the PHA proposes to concentrate its activities in a specific neighborhood(s) the application must contain a map outlining the neighborhood boundaries and a description of neighborhood characteristics as well as a letter from the chief executive officer of the local government indicating the locality's endorsement of the application and describing other public and private improvements underway and/or planned for this neighborhood to complement the Moderate Rehabilitation Program.

(10) Indicate the types of financing expected to be used under the program particularly federal, state or locally assisted financing programs, and describe the availability of the financing. Commitments from these financing sources as to their willingness to finance rehabilitation under this program should be submitted where avail-



able. Types of financing could include but are not limited to Community Development Block Grant loan and grant programs, State Agency rehabilitation loan programs, Neighborhood Housing Services programs and private rehabilitation loan programs. HUD mortgage insurance programs may be used to help secure financing.

(11) Include a description of the PHA's expertise in providing relocation assistance to displaced families. If the PHA proposes to subcontract with another local agency or private entity to provide the services required in Section 882.408, the agency or entity must be identified and its experience in relocation summarized. A statement from the chief executive officer of the local government (which states that the local government will assume the responsibilities as required in Section 882.408) must accompany the application. Additionally, the PHA must indicate that it will provide a preference for Certificates in its Section 8 Existing Housing Program to Families displaced as a result of moderate rehabilitation or should provide a statement from the PHA administering the Section 8 Existing Housing Program in the area that it will provide such a preference. The PHA should also indicate the availability of Certificates for relocation purposes.

(12) Include a statement from the chief executive officer of the local government indicating local government approval of the submission of the application, stating that the application is consistent with the local Housing Assistance Plan, if any, and providing additional comments. The statement should indicate that the chief executive officer understands that these comments are being provided in conformance with Section 213 of the HCD Act of 1974 and that no further opportunity for comment will be given by the field office.

(b) *Other Submissions.* For each application, or in a combined submission covering several applications, the PHA must submit the following items with the application(s) or after application approval but no later than with the PHA-executed ACC. If the administrative plan specified in paragraph (4) is submitted after application approval, the chief executive officer of the local government must sign off on the plan agreeing particularly to the relocation plan and the local government responsibilities contained therein.

(1) An equal opportunity housing plan.

(i) The plan must describe the PHA's policies and procedures for:

(A) Fulfilling the requirements of Section 882.506(a), Public Notice to Owners, and Section 882.516, Public Notice to Lower-Income Families.

(B) Achieving the participation of Owners of units in areas outside low income and minority concentrations, unless the PHA has indicated that the program will be confined to a specific neighborhood receiving coordinated improvements (see paragraph (a)(9)).

(C) Selecting among Owners' proposals to determine which proposals will be approved, including any local preferences for selection and the preferences specified in Section 882.506(d).

(D) Selecting among eligible applicants those to participate in the program, including the preference for Families living in units being rehabilitated under the program and any provisions establishing local preferences for selection.

(i) The plan must also include signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Executive Order 11063; and if the housing assistance will be used within a locality which has a Housing Assistance Plan, a certification that the PHA will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the Housing Assistance Plan.

(2) Estimates of financial requirements for preliminary costs, administrative costs and housing assistance payments on the prescribed forms.

(3) A proposed schedule of Allowance for Utilities and Other Services with a justification of the amounts proposed.

(4) An Administrative Plan.

(i) The plan must contain: a statement of the PHA's overall approach and objectives in administering the Moderate Rehabilitation Program, a description of the procedures to be used in carrying out each administrative function, and a statement of the number of employees proposed for the program, by position and functions to be performed. Where a subcontractor such as the Community Development Agency, other local government staff or private entity will be utilized to perform any of the functions of the PHA, the staff and procedures of the subcontractor must be described.

(ii) The following functions should be addressed in addition to those required in Section 882.204(b)(3)(ii): outreach to Owners; selection of units; initial inspection of units; preparation of work write-ups; preparation of cost estimates; establishment of rents; financing counseling; preparation of loan applications; assistance to Owner in the selection of contractors; execution of Agreements and Contracts; oversight of rehabilitation including inspection of units during rehabilitation; final inspection of units; verifica-

tion of actual costs incurred by the Owner; and rehousing Families who move.

(iii) The plan must also contain the relocation plan of the PHA. This relocation plan must detail how displacement will be minimized and under what circumstances displacement will be allowed. The plan must clearly delineate the responsibilities of the local government, PHA, and Owners as specified in Section 882.408 and must indicate how the PHA will monitor the program to assure that proper relocation payments and assistance are provided. Additionally, it must be stated that no Owner will be selected for participation unless that Owner agrees to make relocation payments to those Families temporarily relocated, in accordance with Section 882.408.

#### § 882.504 Processing of Applications.

(a) *Initial Screening of Applications.* Promptly after receipt of an application, the HUD Field Office will determine whether or not the application is complete. If an application is incomplete, the PHA must be so notified and will be given until the deadline date or, if necessary, a reasonable time thereafter within which to complete the application.

(b) *Evaluation of Applications.* HUD may begin its evaluation immediately upon receipt of the application, but no final decision of approval or disapproval of the application may be made until after the deadline for receipt of applications. Each application will be evaluated by HUD on the basis of all pertinent factors under this Part. In selecting among approvable applications, ranking will be based upon the Field Office's assessment of which applications have the best combination of the following:

(1) The demonstrated capacity of the PHA and/or its subcontractor(s) to provide the technical assistance to Owners required under the program;

(2) The availability of assisted financing resources as demonstrated through commitments from financing agencies (for example, local Community Development or state agency rehabilitation loan programs);

(3) The concentration of the program in a neighborhood and the viability of the neighborhood selected including the locality's demonstrated commitment to the neighborhood. This criteria will only be applicable to applications from PHAs in metropolitan cities and urban counties (as defined in 24 CFR Part 570).

(4) The PHA's experience with the Section 8 Existing Housing Program and/or the PHA's overall administrative capability;

(5) The potential of achieving, as expeditiously as possible, the rehabilita-

tion and leasing of housing units under this Subpart;

(6) The overall feasibility of the proposed program; and

(7) The local government's commitment to provide relocation benefits similar to those provided to Eligible Families to over-income families permanently displaced and/or temporarily relocated from buildings being rehabilitated under the program.

(c) *Disapproval, Conditional Approval, or Approval of Applications.* If an application is disapproved, HUD must notify the PHA by letter indicating in detail the reasons for disapproval. If an application can be approved only if certain changes are made, HUD must notify the PHA by letter stating that the application can be approved if the PHA adopts, within a specified reasonable time as determined by HUD, the changes required by HUD. If an application is approved, the PHA will be sent a notification of application approval.

#### § 882.505 Annual Contributions Contract; Schedule of Leasing.

(a) *Maximum Total ACC Commitment.* The maximum total annual contribution that may be contracted for will be the total for all the units of the Moderate Rehabilitation Fair Market Rents.

(b) *Transmittal of ACC and Execution of ACC by HUD.* These functions must be performed as specified in Sections 882.206(a) and (b).

(c) *Schedule of Leasing.* The ACC will include a provision relating to expeditious leasing of units under the program. HUD will review the PHA-proposed schedule specifying the number of units that are expected to be leased by the end of each three-month period, and will make such changes as it determines to be appropriate. In its transmittal of the ACC to the PHA, HUD will include the HUD-approved schedule. This schedule will be established so as to implement HUD policy that all units in a Section 8 Moderate Rehabilitation program of 100 units or more must be leased by Eligible Families within 18 months. In the case of smaller programs, a shorter time period may be established by HUD. HUD may modify the unit mix and/or reduce the number of units and/or the amount of the annual contributions commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units or change in the unit mix.

#### § 882.506 Public Notice to Owners.

Promptly after receiving the executed ACC, and thereafter as may be necessary, the PHA must make known to

the public through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of the program. The notice must inform Owners where they may apply for the program and must be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logo-type, statement and slogan.

(b) *Owner Proposals.* The PHA must develop a proposal format for Owners wishing to apply for participation in the program which will require, at a minimum, the following information: (1) Name, address and phone number of Owner, (2) Address of property to be rehabilitated, (3) Number, type (elevator/non-elevator) and bedroom size of unit(s) to be rehabilitated, (4) Rent(s) charged by bedroom size during the previous 18 months and the last time the rents were changed on each unit, (5) Number and size of vacant unit(s), (6) Number of units the Owner proposes to be assisted after rehabilitation, (7) Whether the Owner anticipates that permanent displacement or temporary relocation of tenants will be necessary and the anticipated length of any temporary relocation. (If temporary relocation is anticipated, the Owner must indicate whether he is willing to assume the responsibilities specified in 882.408.), (8) The prior participation of the Owner in HUD programs, and (9) Whether the Owner intends to select tenants from the PHA's waiting list or a separate waiting list. If the Owner proposes to develop a separate waiting list and is applying for 5 or more units, the Owner must also be required to submit an Affirmative Fair Housing Marketing Plan.

(c) *Waiting List.* The PHA should establish and maintain a pool of approvable Owner proposals.

(d) *Selection of Owner Proposals.* The PHA must establish a method of selecting among Owner proposals. Proposals must be approved in accordance with criteria established by the PHA, including any PHA rules for preferences as approved by HUD (see Section 882.503(b)(1)(i)(C)). A preference in selection must be provided to those proposals specifying no or only minimal permanent displacement or temporary relocation. No proposal may be approved unless the Owner agrees to assume the responsibility for all temporary relocation payments as specified in Section 882.408.

#### § 882.507 Assistance to Owners.

(a) *Initial Inspection.* Once an Owner's proposal has been approved, the PHA must inspect the property, with the Owner if possible. A determi-

nation must be made by the PHA as to the specific work items which need to be accomplished to bring the unit(s) up to the Housing Quality Standards specified in Section 882.109 and Section 882.403 and/or to prevent the imminent failure of major building systems or components. The PHA, as soon as possible following the inspection, must provide the Owner with a written list of the deficiencies.

(b) *Preliminary Feasibility Analysis.* A rough cost estimate and cash flow analysis of the property following rehabilitation must be made by the PHA. If it is determined at this point that the allowable rents will not support the amount of rehabilitation necessary and thus the undertaking will not be financially feasible, the Owner must be informed of the PHA decision and should be encouraged to apply for the Section 8 Substantial Rehabilitation Program if contract authority is available for that locality. If the PHA finds the proposal infeasible, the Owner must be given the opportunity to dispute the PHA's determination; however, once the Owner's arguments have been considered the PHA will have the final decision in the matter. If the PHA still maintains that the proposal is infeasible, it must select another proposal.

The PHA must request Families residing in the unit(s) to submit applications and must determine the eligibility of the Families. Eligible Families must be briefed on their rights and responsibilities under the program (Section 882.517(c)). The Owner must be informed that ineligible families will be allowed to remain in occupancy; however, an Agreement will not be entered into on any unit occupied by an ineligible family. If it is determined that permanent displacement or temporary relocation will be necessary, requirements of Section 882.403 must be followed.

(c) *Work Write-ups and Cost Estimates.* Should the Owner agree with the assessment of the PHA, both as to the work that must be accomplished and the preliminary feasibility of the project, the Owner with the assistance of the PHA where necessary, must prepare detailed work write-ups including specifications and plans (where necessary) so that a cost estimate may be prepared. The work write-up will describe how the deficiencies specified in paragraph (a) of this section are to be corrected including minimum acceptable levels of workmanship and materials. From this work write-up, the Owner, with the assistance of the PHA, must prepare a cost estimate for the accomplishment of all items specified in this section.

(d) *Feasibility Analysis.* Once cost estimates have been secured, a feasibility analysis of the project must be



conducted by the PHA and Owner. The cost of temporary relocation must be estimated and this amount included in the feasibility analysis. Temporary relocation costs may be considered as a rehabilitation cost and the debt service on the total rehabilitation and relocation costs should be established. All debt service and operating costs must be compared by the PHA to the projected income to determine if and under what circumstances it will be feasible for the Owner to undertake the rehabilitation. The feasibility of various energy conserving improvements must be established at this stage, and where it is determined by the PHA that such improvements will be cost effective over the 15 year term of the Contract, the Owner must provide these improvements.

(e) *Financing.* The PHA must discuss with the Owner the various financing options available. The PHA, where necessary, must also assist the Owner in the preparation of an application for rehabilitation financing when the Owner determines that such financing will be necessary.

(f) *Preparation of Lease Form.* The PHA, where necessary, must assist the Owner in the preparation of a form of tenant Lease which meets the following requirements:

(1) *Term Of Lease.* The term of the lease must be consistent with Section 882.406(c).

(2) *Required Provisions.* The Lease must contain the HUD-prescribed provisions referred to in Section 882.210(f)(2).

(3) *Prohibited Provisions.* The Lease must not contain any clause which falls within the classifications of HUD-prescribed prohibited lease provisions referred to in Section 882.210(f)(3).

#### § 882.508. Agreement to Enter Into Housing Assistance Payments Contract.

(a) *Provisions.* Prior to the commencement of any rehabilitation under this Part, the PHA must enter into an Agreement with the Owner which contains the following:

(1) A statement that the Owner agrees to bring the unit(s) into compliance with the Housing Quality Standards of the program in accordance with the work write-up specified in Section 882.507(c).

(2) A date by which rehabilitation will have commenced and a deadline date by which the rehabilitation will be completed and the unit(s) ready for occupancy.

(3) An anticipated Contract Rent which will be paid to the Owner once rehabilitation is completed, the Contract is executed, and an Eligible Family is occupying the unit(s). This rent will be established in accordance with Section 882.405(b); however, the Contract Rent plus any Allowance for

Utilities or Services must not exceed the applicable Moderate Rehabilitation Fair Market Rent limitation.

(4) A date for final inspection of the unit(s) by the PHA and the Owner must be specified. This date must be as soon as possible after the deadline date specified pursuant to paragraph (a)(2) of this section.

(5) The term of the Contract. The term must be consistent with Section 882.406(b).

(b) *Preparation and Execution.* The Agreement must be prepared by the PHA in the form prescribed by HUD and include all required information in paragraph (a) of this section and a statement specifying the Owner's responsibility for making relocation payments to Families temporarily displaced. The PHA will transmit to the Owner at least two copies of the unexecuted Agreement. After the Owner executes the copies, he must return them to the PHA who will execute the Agreement, returning one copy to the Owner and retaining at least one copy for its records.

#### § 882.509. Rehabilitation Period.

(a) *Timely Performance of Work.* After execution of the Agreement, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, and/or completed, the PHA will have the right to rescind the Agreement, or take other appropriate action.

(b) *Delays.* Although extensions of time may be granted, no increases in Contract Rents may be granted for delays.

(c) *Changes.* (1) The Owner must submit to the PHA for approval any changes from the work specified in the Agreement which would materially reduce or alter the Owner's obligations or the quality or amenities of the project. The PHA may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior PHA approval, the PHA may determine that Contract Rents must be reduced or that the Owner must remedy any deficiency as a condition for acceptance of the project.

(2) Contract Rents may not be increased except in accordance with provisions of Section 882.405(c). Should an increase in Contract Rents be necessitated by changes in local codes or ordinances or other unanticipated changes in work items, an increase will only be approved if PHA approval is obtained prior to incorporation of any changes in the project.

(d) *Vacancies from Execution of HAP Contract to Initial Occupancy.* At the time the contract is executed, the Owner will be required to submit a

list of dwelling unit(s) leased as of the effective date of the Contract and a list of the unit(s) not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased unit(s), pursuant to Section 882.404(a), only if he has fully complied with the requirements of that section and of this paragraph.

(e) *Initial Occupancy.* (1) In filling a vacant unit(s) which is being rehabilitated under the program, the Owner may select from those Eligible Families on the PHA's waiting list or may develop a separate waiting list in accordance with the approved Affirmative Fair Housing Marketing Plan, if applicable. (i) Should an Owner wish to house a family not on the PHA waiting list, the PHA must determine the eligibility of the family for the program. If the family is determined eligible, it must be briefed in accordance with Section 882.517(c) and assisted under the program. (ii) Should the Owner wish not to maintain a separate waiting list the PHA will be responsible for referring Eligible Families to the Owner for selection for any vacant unit(s) that the Owner is rehabilitating under the program.

(2) In order that the unit(s) might be promptly occupied, 60 days prior to the completion of the rehabilitation, or when rehabilitation is begun, whichever is later, the Owner must (i) notify the PHA of any unit(s) which it is anticipated will be vacant on the anticipated effective date of the Contract or (ii) have the families selected by the Owner contact the PHA. If the Owner wishes to select Families from the PHA waiting list, the PHA will notify an appropriate size Family on its waiting list of the availability of the unit. (Since the Owner is responsible for tenant selection, the Owner may refuse any Family provided that the Owner does not unlawfully discriminate. Should the Owner reject a Family, the Family will be returned to the waiting list and the PHA will notify the next appropriate size Family on its waiting list of the availability of the unit.) If the Owner selects a family from the Owner's waiting list, the PHA must determine the eligibility of the Family for participation in the program pursuant to Section 882.517(a).

#### § 882.510. Completion of Rehabilitation.

(a) *Notification of Completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion and cost certifications described in paragraph (b) and (c) of this section.

(b) *Evidence of Completion.* Completion of the project must be evidenced by furnishing the PHA with the following:

(1) A certificate of occupancy and/or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The unit(s) has been completed in accordance with the requirements of the Agreement;

(ii) The unit(s) is in good and tenable condition;

(iii) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Any unit(s) built prior to 1950 is in compliance with applicable HUD Lead Based Paint regulations (24 CFR Part 35); and

(v) If applicable, the Owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the Owner's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or PHA, the Owner will be required to place a sufficient amount in escrow, as determined by the PHA, to assure such payments.

(c) *Actual Cost and Interest Rate Certifications.* The Owner must provide the PHA with a statement of the costs incurred for the rehabilitation and any temporary relocation as well as the interest rate obtained for any rehabilitation loan. The Owner must certify that these are the actual costs and interest rate. The PHA must verify these costs and establish the Contract Rents as provided in Section 882.405.

(d) *Review and Inspections.* (1) Within five working days of the receipt of the evidence of completion, the PHA must review the evidence of completion for compliance with paragraph (b) of this section.

(2) Within the same time period, a PHA representative must inspect the unit(s) in a manner sufficient to enable the inspector to report that the project has been completed in accordance with the Agreement and meets the Housing Quality Standards of the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(e) *Acceptance.* If the PHA determines from the review and inspection that the project has been completed in accordance with the Agreement, the unit(s) will be accepted.

(f) *Acceptance Where Defects or Deficiencies Reported.* If the unit(s) is not acceptable under paragraph (d), the PHA must determine whether and to what extent the defects or deficiencies can be corrected, what corrections are

essential to permit the PHA to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the unit(s), and the extension of time required for the remaining work to be done. The Owner must be notified of the PHA's determinations and, if the Owner agrees to comply with the conditions, an addendum to the Agreement must be entered into, specifying the remaining work, pursuant to which the defects or deficiencies will be corrected and the unit(s) then accepted. If the Owner is unwilling to enter into such an addendum or fails to perform under the addendum, the units will not be accepted. Paragraphs (a), (b), (c), (d) and (e) will apply when the remaining work is completed satisfactorily.

(g) *Notification of Non-acceptance.* If the PHA determines that, based on the review of the evidence of completion and inspection, the unit(s) cannot be accepted, the Owner must be promptly notified of this decision and the reasons.

#### § 882.511. Execution of Housing Assistance Payments Contract.

(a) *Time of Execution.* Upon acceptance of the unit(s) by the PHA pursuant to Section 882.510(e), the Contract will be executed first by the Owner and then by the PHA. The effective date must be no earlier than the PHA inspection which provides the basis for unconditional acceptance.

(b) *Changes from Agreement.* The Contract Rents may be higher or lower than those specified in the Agreement when (1) unanticipated repairs are necessary or actual rehabilitation costs are less than initially estimated; (2) the actual interest rate of the rehabilitation loan differs from that anticipated prior to rehabilitation; or (3) the actual temporary relocation expenses are higher or lower than initially anticipated. Any such changes must be in accordance with requirements of Section 882.405(c).

(c) *Unleased Unit(s).* At the time of execution of the Contract, the PHA must examine the lists of dwelling unit(s) leased and not leased, referred to in Section 882.509(d), and must determine whether or not the Owner has met the obligations under that section with respect to any unleased unit(s) and for which of those unit(s) it will make vacancy payments. The Owner must indicate in writing either concurrence with this determination or disagreement, reserving all rights to claim vacancy payments for the unleased unit(s) pursuant to the Contract, without prejudice by reason of the Owner's signing the Contract.

#### § 882.512. Overcrowded and Under Occupied Units.

If the PHA determines that a Contract unit assisted under this part is not decent, safe, and sanitary by reason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to the unit will not be abated; however, the Owner must offer the Family a suitable alternative unit should one be available and the Family will be required to move. If the Owner does not have a suitable available unit, the PHA must assist the Family in finding an appropriate dwelling unit following the procedure specified in Section 882.517(f) and require the Family to move to such a unit as soon as possible. In no case will a Family be forced to move until suitable alternative housing is available.

#### § 882.513. Adjustment of Allowance for Utilities and Other Services.

The PHA must determine, at least annually, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If the PHA determines that an adjustment should be made, the PHA must then determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and must notify the Owners and Families accordingly.

#### § 882.514. Assistance to Evicted Families.

(a) If a Family is evicted without PHA authorization of the eviction, the PHA must assist the Family as specified in Section 882.517(g) and terminate the HAP Contract.

(b) Should the Family be evicted for cause and in accordance with Section 882.215, the PHA will have no obligation to continue assistance to the Family. However, should the PHA determine to terminate assistance, the Family has the same rights as an applicant determined ineligible (Section 882.517(h)).

#### § 882.515. Reduction of Number of Contract Units for Failure to Lease to Eligible Families.

(a) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the units under the Contract at the time leased or available for leasing by Eligible Families, the PHA may, on at least 30 days' notice, reduce the number of assisted units. The PHA may reduce the assisted units to the number of units so



leased or available for leasing plus 10 percent of the number (rounded up). This reduction, however, will not apply if the failure to lease units to Eligible Families is permitted by the PHA as part of the Owner's effort to promote economically mixed housing.

(b) If an Owner has only one unit under Contract and the Contract terminates at a time when the Family is ineligible for payments, the Contract will not be renewed. In addition, if the Owner has only one unit under Contract and if one year has elapsed since the date of the last housing assistance payment, the Contract will be terminated (with the consent of the Owner if the Contract does not provide for termination under the circumstances) even if the termination date has not yet been reached.

(c) The PHA may agree to an amendment or reexecution of the Contract to provide for subsequent restoration of any reduction or cancellation made pursuant to paragraph (a) or (b) of this section. If (1) the PHA determines that the restoration or reexecution is justified by demand, (2) the Owner has a record of compliance with obligations under the Contract, and (3) annual contributions contract authority is available.

(d) For projects of greater than 12 units in which more than 40 percent of the total units were assisted units on the effective date of the Contract, the Owner may, on at least 30 days notice to the PHA, reduce the number of assisted units under the Contract to no less than 40 percent of the total project units. Any other reduction in the number of assisted units in a project is prohibited, during the term of the Contract, without prior approval of HUD. Refusal on the part of the Owner to comply with this prohibition will be a violation of the Contract and grounds for suspension or debarment from HUD programs.

#### § 882.516. Public Notice to Lower-Income Families; Waiting List.

(a) *Public Notice to Lower-Income Families.* (1) If the PHA does not maintain a waiting list for its Existing Housing Program pursuant to Section 882.207(b) which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA must, promptly after receiving the executed ACC, make known to the public, the availability of the program in accordance with Section 882.207(a).

(i) The notice must state that assistance under this program will be available only in specified units which have been moderately rehabilitated under the program.

(ii) The notice must also state that current occupants of housing assisted under the Act and applicants on a waiting list for any such housing

(except for those Families on the Section 8 Existing Housing waiting list) must apply separately if they wish to be considered for assistance under this Part. In addition, the notice must state that such applicants will not lose their place on the public housing or other waiting list.

(iii) The notice must be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.

(2) If the PHA has a waiting list for its Existing Housing Program which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA need not advertise the availability of assistance under this program but must refer Families on the Existing Housing waiting list.

(b) *Waiting List.* Any Family on the waiting list must be allowed to refuse participation in the Moderate Rehabilitation Program without losing its place on the waiting list for Existing Housing.

#### § 882.517. Family Participation.

(a) *Initial Determination of Family Eligibility.* (1) The PHA will be responsible for determining Family eligibility for participation, in accordance with 24 CFR Part 889. The PHA will be responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments. If an Owner is the initial point of contact by an applicant, he must refer the applicant to the PHA.

(2) The PHA must select Families for participation in accordance with the provisions of this Part and in accordance with the PHA's application, including any PHA requirements or preferences as approved by HUD (see Section 882.503(b)(1)(i)(D)). The PHA must provide assistance to Eligible Families then living in units which are designated for moderate rehabilitation under this Part or Families chosen by the Owner without requiring that these Families be placed on the waiting list. If assistance under this Part is being concentrated in a neighborhood (see Section 882.503(a)(9)), the PHA may establish a preference for applicants currently residing in that neighborhood.

(3) Every applicant for participation must complete and sign the form of application prescribed by HUD.

(4) The PHA must maintain a system to assure that it will be able to assist all Families selected to participate within its ACC authorization and that it will comply, to the maximum

extent feasible, with the unit distribution in the ACC.

(5) PHA records on applicants and Families selected to participate must be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Selection of Families for Participation.* If an applicant Family is determined by the PHA to be eligible and is selected for participation, the Family must be given information as to the Gross Family Contribution and the PHA's schedule of Allowances for Utilities and Other Services and, if the Family has not been selected by an Owner for a specific unit, a listing of units, if more than one unit is available, which are available for selection by the Family.

(c) *Briefing of Families.* When a Family is initially selected for participation, a full explanation of the following must be provided to appraise the Family of its responsibilities and the responsibilities of the Owner (this may be done either in group or individual sessions; adequate opportunity must be provided for Families to raise questions and to discuss the information provided):

(1) Family and Owner responsibilities under the Lease and Contract;

(2) Significant aspects of the applicable State and local laws;

(3) Significant aspects of Federal, state and local fair housing laws;

(4) The Family's options under the program if it decides to move;

(5) The Family's options under the program should the Owner terminate the Contract or should the Family be required to move due to an increase or decrease in Family size; and

(6) The fact that the subsidy is tied to the unit and the Family is required to select from among one or more units moderately rehabilitated under this Part.

(e) *Continued Participation When Assisted Family Wishes to Move.*

(1) If an assisted Family notifies the PHA that it wishes to find another dwelling unit within the area in which the PHA has determined that it is able to enter into Contracts or that it has found another unit to which it wishes to move, the PHA, unless it determines that the Owner is entitled to payments pursuant to Section 882.112 on account of nonpayment of rent or other amount owed under the Lease and that the Family has failed to satisfy any such liability or unless it determines the Family to be ineligible, may:

(i) Give the Family a preference as a formerly assisted Family and provide it with the next available Section 8 Existing Housing Certificate of Family Participation or refer the Family to the next available unit rehabilitated under this Part, or

(ii) Place the Family on its Section 8 Existing Housing Program waiting list as if they had just applied.

(2) If the PHA determines the Family to be ineligible, provisions of paragraph (h) of this section must be followed.

(3) If an assisted Family wishes to move out of the area in which the PHA has determined that it is able to enter into Contracts and the Family qualifies under paragraph (e)(1) of this section, the Family may obtain housing assistance in the jurisdiction to which it is moving, provided that the Family obtains a Certificate of Family Participation from the appropriate PHA in the new jurisdiction or the PHA in the new jurisdiction refers the Family to a unit rehabilitated under this Part. The appropriate PHA must treat the Family either as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance.

(f) *Continued Participation When Assisted Family Forced to Move.* Should an assisted Family which qualifies for continued assistance be forced to move through no fault of its own, such as an increase in Family size, and the PHA Contract cannot be cancelled in accordance with its terms, the Family may continue to receive housing assistance through one of the following:

(1) The PHA must refer the Family to the Owner of any vacant unit which has been moderately rehabilitated under this Part if such a vacancy exists.

(2) The PHA must refer the Family to the Owner of the next vacant unit which is moderately rehabilitated under this Part provided that a vacancy will occur within a reasonable time after the Family is notified to vacate its present unit.

(3) If the PHA has a Section 8 Existing Housing Program and Certificates are available, the PHA must offer the

Family a Certificate of Family Participation and assist the Family in finding a suitable replacement unit.

(4) The PHA must offer the Family the next available, suitable unit owned or managed by the PHA under another program.

(g) *Continued Participation of Family When HAP Contract is Cancelled.* Should an Owner wish to end participation in the program, evicts an assisted Family without PHA authorization of the eviction or otherwise breaches the Contract, the assisted Family, if it is eligible for continued assistance, may continue to receive housing assistance through the conversion of the Moderate Rehabilitation unit allocation to an Existing Housing unit. The Family must then be treated as any certified Family under Subparts A and B and must be issued a Certificate of Family Participation and assisted by the PHA in finding a suitable replacement unit. The unit will then be considered an Existing Housing unit and all requirements of Subparts A and B will be applicable. If the family is determined ineligible for continued assistance, the Certificate may be offered to the next Family on the PHA's Existing Housing waiting list.

(h) *Families Determined by the PHA to be Ineligible.* If a Family is determined by the PHA to be ineligible on the basis of income or family composition, or for any other reason, either at the application stage or after assistance has been provided on behalf of the family, the PHA must promptly notify the family by letter of the determination and the reasons therefore, and the letter must state that the family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the family is ineligible, it must so notify the family in writing. The procedures of this paragraph do not preclude the family from exercising its other rights if it

believes it is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA must retain for three years a copy of the application, the notification letters, the family's response if any, the record of any informal hearing, and a statement of final disposition.

#### § 882.518. Reexamination of Family Income and Composition.

A reexamination of Family Income, composition, and redetermination of Gross Family Contribution must be conducted by the PHA as specified in Section 882.212. A Family's eligibility for housing assistance payments will continue until the amount payable by the Family equals the Gross Rent for dwelling unit it occupies. However, the termination of eligibility at that point will not affect the Family's other rights under the Lease. Any resumption of housing assistance payments as a result of subsequent changes in income or rents or other relevant circumstances will be contingent upon the availability of assistance under the Contract (see Section 882.515). A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., November 30, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing,  
Federal Housing Commissioner.

[FR Doc. 78-35696 Filed 12-27-78; 8:45 am]



THURSDAY, DECEMBER 28, 1978

PART IV



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**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**Office of the Assistant  
Secretary for Community  
Planning and  
Development**

**COMMUNITY  
DEVELOPMENT BLOCK  
GRANTS**

**Use of Debarred, Suspended or  
Ineligible Contractors**

Registered  
Federal Property



[4210-01-M]

**HOUSING AND URBAN  
DEVELOPMENT**

Office of the Secretary

[24 CFR Part 570]

[Docket No. R-78-586]

**COMMUNITY DEVELOPMENT BLOCK GRANTS****Use of Debarred, Suspended or Ineligible  
Contractors****AGENCY:** Department of Housing and Urban Development.**ACTION:** Proposed rulemaking.**SUMMARY:** The purpose of this proposed rule is to amend 24 CFR 570, Subpart K to preclude the use of block grant funds by recipients to employ, award contracts to, or otherwise engage the services of, contractors who are debarred, suspended, or included in lists which make their participation in federally-assisted programs illegal.**DATE:** Comments must be received on or before January 29, 1979.**ADDRESS:** Comments should be addressed to: Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, S.W., Room 5218, Washington, DC 20410.**FOR FURTHER INFORMATION  
CONTACT:**

William Thomas, Office of Block Grant Assistance, Department of Housing and Urban Development, Washington, DC 20410, (202) 755-6304.

**SUPPLEMENTARY INFORMATION:** The purpose of this proposed rulemaking is to propose an addition to the rules governing the community development block grant program by inserting a new § 570.614 in Subpart K, which would preclude the use of block grant funds to employ, award contracts to, or otherwise engage the services of, any contractor who is debarred, suspended, or included in lists which make their participation in fed-

erally-assisted programs illegal, pursuant to 24 CFR Part 24. A current Consolidated List, including the names of those contractors and grantees against whom the Department has invoked administrative sanctions, is provided to HUD Area and Regional Offices by the HUD Inspector General.

With respect to the above change, interested persons are invited to participate in the making of the final rule by submitting written comments or views on the proposed amendment. Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All comments received on or before the date specified above will be considered before the adoption of the final rule. Copies of the comments will be available for inspection during business hours at the above address.

**OTHER INFORMATION:** A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with the National Environmental Policy Act of 1969. Copies of the Finding are available for inspection and copying during business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, 24 CFR Part 570 is amended by revising the Table of Contents for Subpart K and by revising Subpart K as set forth below.

I. The Table of Contents to 24 CFR Part 570, Subpart K, is revised to read as follows:

**Subpart K—Other Program Requirements**

Sec.

570.600 Limitations on Local Option Activities and Contingency Accounts

570.601 Nondiscrimination

570.602 Relocation and Acquisition

570.603 Environment

570.604 Historic Preservation

570.605 Labor Standards

570.606 Architectural Barriers Act of 1968

570.607 Activities for Which Other Federal Funds Must be Sought

Sec.

570.608 Hatch Act

570.609 National Flood Insurance Program

570.610 Clean Air Act and Federal Water Pollution Control Act

570.611 Lead-Based Paint Poisoning Prevention Act

570.612 Activities Conducted by Nonprofit Entities, Small Business Investment Companies, and Local Development Corporations [Reserved]

570.613 Disposition [Reserved]

570.614 Use of Debarred, Suspended, or Ineligible Contractors

**AUTHORITY:** Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

II. Subpart K is amended by the addition of § 570.614 to read as follows:

**§ 570.614. Use of Debarred, Suspended, or Ineligible Contractors.**

Block grant assistance provided with funds under this Part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, any contractor during any period of "debarment," "suspension," or "placement in ineligibility status" (as these terms are defined in 24 CFR § 24.4) of such contractors.

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 25, 1978.

ROBERT C. EMBRY, Jr.,  
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-35851 Filed 12-27-78; 8:45 am]



THURSDAY, DECEMBER 28, 1978

PART V



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## COUNCIL ON WAGE AND PRICE STABILITY

### NONINFLATIONARY PAY AND PRICE BEHAVIOR

Voluntary Standards

Registered  
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[3175-01-M]

## Title 6—Economic Stabilization

## CHAPTER VII—COUNCIL ON WAGE AND PRICE STABILITY

## PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

## Voluntary Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Final standards.

SUMMARY: This document provides a new Part 705 to the regulations of the Council on Wage and Price Stability implementing the President's anti-inflation program. In particular, this part contains an appendix specifying voluntary standards for noninflationary pay and price behavior. These standards were published in proposed form by the Council on October 31, 1978, and appeared in the *FEDERAL REGISTER* on November 7, 1978, at 43 FR 51938. Also published here are a set of interpretative Questions and Answers regarding the voluntary standards.

The Final Standards and Questions and Answers were published in preliminary form by the Council on December 13, 1978. Today's version of the publication incorporates some editorial changes that improve the clarity but do not change the meaning of the final standards.

EFFECTIVE DATE: December 13, 1978.

## FOR FURTHER INFORMATION CONTACT:

Sean Sullivan, Office of Pay Monitoring, Council on Wage and Price Stability, 726 Jackson Place, N.W., Room 5002, Washington, D.C. 20506 for information on the pay standard (202-456-6480). John Layng, Office of Price Monitoring, Council on Wage and Price Stability, 726 Jackson Place, N.W., Room 4026, Washington, D.C. 20506 for information on the price standard (202-456-7000).

SUPPLEMENTARY INFORMATION: In Executive Order 12092, the President prescribed voluntary standards for noninflationary pay and price behavior as part of his anti-inflation program. He also directed the Council on Wage and Price Stability to define further and to clarify these standards, and to monitor compliance with the standards for the duration of the program. Accordingly, the Council issued a rule which, in an appendix, contained specific detailed standards for noninflationary pay and price behavior. The Council contemplated further clarification after public comments.

Approximately 300 written comments were received, and the Council

held numerous meetings with business, labor, and public interest groups. The comments and a summary memorandum are available for inspection at the Council. Of the written comments, 22 were from labor organizations, 14 were from public interest groups, State and local governments, and schools, 197 were from businesses, and 50 were from individuals. The modifications described below, as well as the interpretative questions and answers which appear with this notice, were prepared in response to issues raised by the public, and implement changes necessary to achieve the purposes of the program and to facilitate compliance.

The final standards became effective on December 13, 1978, when they were released by the Council. The public interest requires the rapid dissemination of these voluntary standards and will not permit a further 30-day comment period. Nonetheless, the Council will accept further comments particularly upon the changes.

While these final standards differ in certain material respects from the proposed standards, the modifications are for the most part minor and are consistent with the original objectives of the program. Those companies that made a good-faith effort to comply with the standards as first issued will not be considered out of compliance if their behavior is not now in complete conformity with the final standards. However, all companies are expected to make whatever alterations in their conduct may be necessary in order to bring their operations into compliance within a reasonable period of time.

In connection with the revised price standard, the Council also adopted special standards for certain sectors of the economy. While there was no advance opportunity to comment on these alternative standards, the Council did consult with representatives of the affected sectors, and will accept comments on such standards.

The interpretative Questions and Answers published here are intended to clarify the standards. The Council will issue further Questions and Answers in the future as the need for further clarification and interpretation arises. Interested persons are encouraged to send suggestions in this regard to the Council through the Offices identified above.

In order to provide formal, consistent treatment of administrative issues arising under the standards, procedural rules will be issued shortly. These rules will include provisions for reports and notifications, exceptions from the standards based on hardship or gross inequity, findings of noncompliance, removal from any list of non-complying companies, and similar matters.

Since these standards are voluntary, the requirements of Executive Order 12044 do not apply. However, where feasible, the Council has complied with the procedures of that Order.

The following is a discussion of the major modifications of the Price and Pay Standards.

## THE PRICE STANDARD

The price standard has been changed to clarify the Council's initial intention that the price-deceleration standard be the primary standard and that the profit-margin standard be available only as an exception when circumstances warrant. Many companies interpreted the two standards as being equally acceptable, and expressed an intention, therefore, to utilize the more easily calculated and, in some cases, more advantageous profit-margin test. Indeed, twenty-five of the written comments sought an easing of the profit-margin standard to make it an even more attractive alternative. In addition, the profit-margin limitation as proposed allowed firms to expand dollar profits by raising prices at the same rate that costs increase.

Under the final price standard, companies that cannot meet the price-deceleration standard must not exceed the average profit margin in the best two out of the last three preceding years and must limit their dollar profit increases to 8 1/4 percent (the target rate of inflation with full compliance) plus the percentage growth in physical volume (see Section 705A-6(a)).

Under the profit-margin standard as originally proposed, a constant profit margin implied a percentage growth in aggregate profit equal to that of revenue. Thus a 20-percent growth in sales implied a 20-percent growth in profit. Under the revised standard, a 20-percent growth in profit associated with a 5-percent increase in prices and a 15-percent growth in output is acceptable; if, however, the 20-percent growth results from a 5-percent growth in output and a 15-percent price increase, it is unacceptable.

The Council made other changes in the price standard. In response to comments, it added a provision that any company with an average price increase below 1.5-percent in the program year is in compliance regardless of the company's price history in 1976-77 (see Section 705A-2). This added provision helps to ensure that companies that have shown restraint in prior years would not be unduly penalized and it also provides symmetry with the 9.5 percent ceiling on average price increases that was set forth in the original standards.

Also, the Council adopted modified price standards for selected industries that would have special difficulties in

applying the general price standard. Retailers, wholesalers, and food processors are provided the option of limiting increases in gross margin (see Section 705C-2). These firms frequently lack the data with which to compute a price index, and a gross margin limitation is more reflective of the way in which they make pricing decisions. The average increase in professional fees (e.g., for doctors, lawyers, dentists, and architects) is limited to 6.5 percent. Fee increases for individual professional services are limited to 9.5 percent (see Section 705C-3).

## THE PAY STANDARD

Compliance with the final pay standard, as with the proposed pay standard, requires a 7-percent-or-less annual increase in average pay rates. However, the pay standard has been modified in one major respect. The proposed pay standard counted all increased costs of health care and pension benefits against the 7-percent ceiling, even if cost increases were associated only with the maintenance of existing benefits. This provision generated a substantial amount of adverse comment. One hundred twelve (112) respondents described the difficulties of counting increased costs of unchanged benefit plans against the 7-percent pay standard. Six (6) of these comments were from labor groups, while ninety-nine (99) were from business organizations. These comments underscored the substantial amount of uncertainty involving the funding requirements for health and pension benefit plans. The costs of funding unchanged, existing plans are largely uncontrollable to the employer. Furthermore, an unusual amount of illness in a particular employee group or longevity among pensioners can substantially alter the costs of a plan. Without some provision in the pay standard to temper the effects of such funding expenses, employees with identical plans in different groups would be subject to different wage and salary limitations under the anti-inflation program. To eliminate these inequities and increase the employer's control over amounts included in the pay-rate calculations, the Council modified the pay standard with respect to health and pension plans.

The final pay standard counts only the first 7 percent of health care cost increases associated with maintaining existing health benefits. Any costs resulting from expanded benefits are counted in full (see Section 705B-6). Similarly, changes in employer contribution rates for pensions will not be charged against the pay standard as long as the increase is required by changes in funding methods, changes in amortization periods, changes in actuarial assumptions, or plan experi-

ence. As in health care, any pension cost increase attributable to increased benefits will be counted in full against the pay standard (see Section 705B-7).

A number of comments also suggested that the quarterly compliance requirement of nonunion employee units places an unfair and burdensome requirement on companies with non-union work forces. In response, the Council adopted an annual compliance standard, although companies should be prepared to demonstrate throughout the program year that their pay situation is consistent with the pay standard (see Question II-E-2).

A new section has been added to cover pay-rate increases due to acute labor shortages. Such pay-rate increases in excess of the standard are permitted so long as the specific conditions set forth in Section 705B-11 are met.

Comments also suggested that companies should be allowed to adjust for shifts in the composition of the work force in determining compliance for nonunion employee units. Allowing such adjustments would prevent a company from being out of compliance because of the closing of a plant during the program year or because of other similar occurrences that could cause the average pay rate to increase by more than 7 percent even though the standard is observed for each type of job. In response to these suggestions, the revised pay standard provides two computation options. The first (see Section 705B-4(e)) allows direct adjustment for changes in the composition of employees among distinct types of jobs. The second (see Section 705B-4(b)) allows firms to comply by computing average pay-rate increases for the group of individuals employed throughout the program year. Under this latter option, pay-rate increases for legitimate individual promotions and changes in individual job qualifications may be deducted in determining compliance.

Numerous comments pointed out that, in many instances, actual payments to employees during the program year will be based on decisions and commitments made prior to the President's announcement. In these situations, as in the case of existing union contracts, it was suggested that a company should not be out of compliance as a result of fulfilling such commitments. Several revisions to the standards were made to accommodate some of these situations.

First, firms may exclude from the computation of pay increases those increases in excess of 7 percent that are dictated by the completion of an annual pay plan that was in operation prior to October 2, 1978 (see Section 705B-4(c)).

Second, adjustments may be made for future pay-rate increases if these increases were communicated to the individual recipient employees prior to the President's announcement (see Section 705B-4(d)). In both instances, these revisions are intended to provide equitable treatment of nonunion units relative to units under existing collective bargaining agreements.

Third, special standards are provided for long-term future-value incentive plans. Under these plans, payments made during the program year are largely uncontrolled by the firm since they are the product of grants made or plans implemented in the past. As a result, such payments are excluded from pay and a separate limit is placed on the number of units granted during the program year (see Section 705B-5).

Finally, annual incentive compensation and deferred pay elements are treated as pay over the period earned rather than when payment is actually made as in the proposed standard (see Pay definition in Section 705D).

Accordingly, a new Part 705 and an appendix thereto are added to the regulations of the Council on Wage and Price Stability at Chapter VII of Title 6 of the Code of Federal Regulations.

Following these standards are printed Questions and Answers issued by the Council to provide clarification and interpretations.

## PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

## § 705.1 Authority.

The provisions of this part are promulgated under the Council on Wage and Price Stability Act, Pub. L. 93-387, as amended by Pub. L. 94-78, and Pub. L. 95-121 (12 U.S.C. 1904 note), and particularly in furtherance of § 2(c), § 3(a)(4), and § 3(a)(5) of that Act and under Executive Order 12092.

## APPENDIX—VOLUNTARY STANDARDS

## 705A PRICE STANDARDS

705A-1 *General Applicability of the Price Standard.* The price standard applies to all goods and services (products) sold in the United States and its territories and possessions, including goods and services sold by Federal, State, and local government entities.

705A-2 *Price Deceleration Standard.* A company complies with the general price deceleration standard if its program-year rate of price change is no greater than (1) the base-period rate of price change minus the deceleration percentage or (2) 9.5 percent, whichever is less. However, a company with a program-year rate of price change of 1.5 percent or less will be considered to be in compliance with the price deceleration standard regardless of its base-period rate of price change. For purposes of this standard:



(a) The program-year rate of price change is the sales-weighted average of the percentage changes of a company's product prices measured from the last calendar or fiscal quarter completed prior to October 2, 1978, through the same quarter of 1979.

(b) The base-period rate of price change is the sales-weighted average of the percentage changes of a company's product prices from the last calendar or complete fiscal quarter of 1975 to the corresponding quarter of 1977, expressed at annual rates.

(c) The deceleration percentage is 0.5 percentage points unless a company experiences pay deceleration that is greater than 0.5 percentage points, in which case full pass-through of the additional pay deceleration is required for compliance with the general price deceleration standard. In such instances, the total price deceleration percentage is 0.5 percentage points plus the multiple of the company pay share and the rate of pay deceleration that is in excess of 0.5 percentage points.

**705A-3 Exclusions from Company Price Calculations.** Sales by producers of goods and services included in the following categories are excluded from the calculation of a company's average price change:

(a) Agricultural, fishing, forestry and mineral products included in the 1972 *Standard Industrial Classification Manual*, Major Groups 01, 02, 08 (except 085), 09, 10 (except 108), 11 (except 1112), 12 (except 1213), 13 (except 1321 and 138), and 14 (except 148).

(b) Recyclable scrap materials including, but not limited to, ferrous and nonferrous metal scrap, waste paper, textile waste, scrap rubber, scrap plastics, and glass cullet.

(c) Commodities whose historical and current price changes are closely tied to price movements on an organized open exchange market, either domestic or foreign.

(d) Exports of goods and services.

(e) Deliveries during the program year at prices determined by contracts existing before October 2, 1978. If the contract allows for seller discretion to adjust prices, the delivery is not excluded. Deliveries under preexisting contracts that do not specify delivery prices are not excluded.

(f) Products exchanged in other than open and arms-length transactions.

(g) New or discontinued products. For the purpose of this exclusion, new and discontinued products are those products that were introduced or discontinued during either the base period or the program year. Products that existed throughout the base period or that exist throughout the program year should be included in the calculations of the rates of price change for those respective periods. A product does not become new or discontinued merely because of altered specifications, style, packaging, or quality changes. Such changes should be reflected in price changes (for example, quality decreases should be reflected as price increases and quality increases should be reflected as price decreases).

(h) Custom or one-time product sales (products specially produced to particular-buyer specifications). Such products must have characteristics that are substantially different from any other products previously sold by the company. To qualify for the exclusion, custom products must meet the same criteria as those for new products. If the custom product is produced and delivered over the duration of the entire base

period or program year, it does not qualify for exclusion.

(i) Interest rates.

**705A-4 Six-month Standard for Price Increases.** During the first half of the program year, the average rate of price change for a company should not exceed 50 percent of the allowable program-year rate of price change, as defined in Section 705A-2. However, a company need not comply with this six-month limit if it can demonstrate that the increases in excess of 50 percent of the allowable program-year change can be justified on grounds of seasonal variations in business operations, historical business practices, or unusual business conditions and will not prevent compliance with the general price deceleration standard by the end of the program year. However, if a company exceeds the six-month price standard, a company must also be able to show that its pricing actions are consistent with adherence to the profit margin limitation (for the program year), defined in Section 705A-6(a).

**705A-5 Insufficient Product Coverage.** For the purpose of this section, a company's adjusted net revenues are defined as the company's net revenues minus revenues from the sale of products identified in Section 705A-3(a)-(e).

(a) If adjusted net revenues during the four quarters prior to the program year are less than 25 percent of a company's net revenues, the company need not comply with the price standard or the profit margin limitation.

(b) If products excluded under 705A-3(f)-(i) account for one-third or more of a company's adjusted net revenues for the program year, the company need not comply with the general price deceleration standard but should comply with the profit margin limitation described in section 705A-6(a).

**705A-6 Exceptions.** (a) *Profit Margin Limitation.* (1) If a company is unable to comply with the price deceleration standard because it is impossible to calculate its average price change or because of uncontrollable price increases in goods and services it buys, it should satisfy the following two-part profit limitation.

(i) The program-year profit margin should be no higher than the sales-weighted average profit margin over the best two of the company's last three fiscal years prior to October 2, 1978.

(ii) Program-year profit should not exceed base-year profit by more than 6.5 percent plus any positive percentage growth in physical volume from the base year to the program year. Base-year profit can be either profit earned during the four complete fiscal or calendar quarters prior to the program year, or the average profit margin determined in (i) above multiplied by sales or revenues in the last four complete fiscal quarters prior to the program year.

(2) A company's profit margin is the ratio of profit to net sales and/or revenues.

(i) Profit is defined as the sum of item 14 and items 11 through 13 minus items 7 through 10 in 17 CFR 210.5-03. Briefly, profit is "income or loss before income tax expense" minus dividend income, interest or profit on securities, and miscellaneous other income, plus interest expense and amortization of debt discount and expense, losses on securities, and miscellaneous income deductions.

(ii) Net sales and/or revenues consist of (1) net sales of tangible products (gross sales less discounts, returns, and allowances); (2)

operating revenues of public utilities; and (3) other revenues such as royalties, rents, and the sale of services and intangible products (e.g., engineering, research and development, and other professional services). This definition is consistent with 17 CFR Section 210.5-03, items 1A, 1B, and 1C.

(b) *Undue Hardship and Gross Inequity.* The Council may except a company from the application of the price deceleration standard, make adjustments to the base-period rate of price change, or alter application of the profit margin limitation to avoid extreme situations of hardship or gross inequity.

#### 705B PAY STANDARD

**705B-1 Pay Standard.** For each employee unit, the annual increase in average pay rates should be 7 percent or less.

**705B-2 Employee Units.** For the purpose of establishing compliance with the pay standard, a company must identify three types of employee units:

(a) Each group of the company's employees subject to a particular collective bargaining agreement to which the company is a party constitutes a separate employee unit.

(b) All management employees (not under a collective bargaining agreement) constitute an employee unit.

(c) All other employees constitute an employee unit.

A company need not identify separately collective bargaining units accounting for less than 5 percent of its employees. However, if a collective bargaining unit is not separately identified, the workers must be included in the "all other employees" category.

**705B-3 Application of the Pay Standard to Collective Bargaining Agreements.** (a) A company complies with the pay standard if the annual rate of pay-rate change over the life of each collective bargaining agreement negotiated during the program year is 7 percent or less.

(b) In addition, the annual pay-rate increase may be no greater than 8 percent in any year of a multi-year agreement.

(c) For purposes of determining whether the annual rate of pay-rate change complies with the pay standard, formulas for cost-of-living adjustments should be computed on the assumption of a 6-percent annual rate of inflation in the Consumer Price Index over the life of the contract.

(d) The cost of private fringe benefit programs should be measured by employer contribution rates.

(e) Pay-rate increases dictated by agreements signed prior to October 25, 1978, are exempted from the pay standard.

(f) A contract that includes a provision for a future wage reopening will be assumed to be terminating on that date.

**705B-4 Application of the Pay Standard to Employees Not Under Collective Bargaining Agreements.** (a) A company complies with the pay standard if, for each employee unit, the pay rate in the last quarter of the program year does not exceed the pay rate in the base quarter by more than 7 percent.

(b) Alternatively, compliance may be determined by computing pay-rate changes for the fixed population of continuing employees employed in the beginning and end of the program year. In this case pay-rate increases may exclude the effects of legitimate promotions and qualification increases.

(c) If pay-rate increases for recognized employee groups are dictated by the continuation of a formal annual pay plan in operation as of October 1, 1978, and, solely due to the continuation of this plan, the dictated pay components for the employee group increase by more than 7 percent during the program year, then the dictated increase in these components above 7 percent may be excluded in determining compliance.

(d) If companies communicated to recipient employees prior to October 25, 1978, the details of a formal annual plan to take effect during the program year, the pay rate increases dictated by this plan will be treated as in (c). However, the company should be prepared to demonstrate that it is an established practice to announce pay-plan changes in this time period and should continue this practice by communicating a subsequent annual pay plan in compliance with the pay standard prior to October 25, 1979.

(e) In determining compliance under (a), adjustments may be made for shifts in the composition of the work force among distinct functional employee subgroups within the employee unit.

**705B-5 Pay Standard for Future Value Incentive Plans.** (a) A future value incentive plan is any long-term plan under which the compensation value of the units (such as shares, stock options, and awards) granted or issued will not be known until some future time.

(b) Any such units granted or issued prior to October 25, 1978 under such plans are not subject to the pay standard.

(c) The average number of units per recipient granted or issued in the program year under any continuation of, or modification to, existing plans or creation of successor plans may not exceed 107 percent of (1) the average number granted or issued in the twelve-month period prior to the program year of (2) the annual average of the units granted over the last five years, whichever is greater.

(d) With respect to plans covered by (c), any spread between an option or purchase and price fair market value at the time of the grant is included as pay.

(e) For any new plans introduced during the program year for which there is no historical precedent, companies should place a value on units granted or issued in the program year consistent with generally accepted accounting practices and include these amounts in pay.

**705B-6 Maintenance of Health Plan Benefits.** In the program year or over the life of a new collective bargaining agreement, changes in the costs of maintaining existing health benefits should be charged against the pay standard up to a 7 percent annual increase in such costs; any increases above 7 percent are excluded from computations for purposes of measuring compliance with the standard. Any changes in costs due to changes in benefits should be fully included as pay-rate changes.

**705B-7 Changes in Pension Funding Costs.** For pension plans that pay specified benefits at retirement (qualified defined benefit plans), changes in employer costs due to (1) changes in funding methods, (2) changes in amortization periods, (3) changes in actuarial assumptions, and (4) plan experience (other than year-to-year wage or salary changes) are not included as pay-rate changes. Changes in employer costs due to plan amendments, changes in the benefit structure, or changes in benefit levels due to

wage or salary changes are included as pay-rate changes.

**705B-8 Low-Wage Exemption.** Employees earning \$4.00 or less per hour in straight-time hourly wages on October 1, 1978, must be excluded from each employee unit in making pay-rate computations.

**705B-9 Tandem Pay Rate Changes.** Pay-rate changes in one employee unit that have been regularly linked to pay-rate changes in another employee unit in a leader-follower relationship can be excepted either where pay-rate increases in the leader unit were agreed to prior to October 25, 1978, or where pay-rate increases agreed to for the leader unit after October 24, 1978 are in compliance with the pay standard. Employee units need not be in the same company. In order to establish such a linkage, the parties must demonstrate that the past pay-rate increases of the two employee units have been equal in value and directly related in timing.

**705B-10 Pay-Rate Increases Traded for Productivity-Improving Work-Rule Changes.** In determining compliance, that part of a pay-rate change that is in return for changes in contractual work-rules and practices that alter productivity may be deducted from the total pay-rate change. In order to comply in this manner, it must be demonstrated that the cost reductions generated by the work-rule changes are equal to or greater than the excess of the pay-rate change over the pay standard.

**705B-11 Pay-Rate Increases Attributable to Acute Labor Shortages.** Where pay-rate increases in excess of the standard are necessary to attract or retain employees in a particular job category because of an acute labor shortage, the amount of such excess may be excepted if the following conditions for these job categories are met:

(a) The proportion of vacancies during the preceding quarter has increased abnormally over that experienced during the past two years.

(b) The time required to fill vacancies has increased abnormally over that required during the past two years, despite intensive recruiting.

(c) Pay rates for entry-level employees in these categories have increased abnormally over the past two years; and

(d) The local Employment Service Agency has certified that such an acute labor shortage exists.

**705B-12 Undue Hardship or Gross Inequities.** The Council may grant an exception from the application of the pay standard or may make appropriate adjustments in the standard to avoid situations of undue hardship or gross inequity.

#### 705C MODIFIED PRICE STANDARDS FOR SELECTED INDUSTRIES

**705C-1. General.** This subpart provides modified price standards for certain industries for which application of the general price standard may be inappropriate.

**705C-2. Margin Standards for Wholesale and Retail Trade and for Food Manufacturing and Processing.**—(a) *Eligibility.* A percentage margin standard is available as an alternative to the price standard to the entire wholesale and retail trade sector (SIC 50-59), including food service operations. A separate margin standard is available as an alternative to the price standard for all firms in the food manufacturing and processing industries (SIC 20, excluding 2082, 2083, 2084, and 2085). This includes nonalco-

holic but excludes alcoholic beverage industries. Any company or subsidiary or operating division of a company doing more than one-half of its business within one of the above industries may apply the appropriate margin standard for those operations. However, any company in these industries that is able to comply with the general price standard prescribed in 705A-2 is encouraged to do so. Companies that cannot comply with these alternatives are eligible for exceptions under the conditions specified in 705A-6.

(b) *Definitions.* (1) The gross margin is equal to net sales (gross sales adjusted for discounts, returns, coupons, and other allowances) less the cost of food products used in food manufacturing or the cost of goods sold by wholesale and retail trade companies.

(2) The average percentage gross margin for a year is the total gross margin divided by net sales for the year.

(3) The base year is the four calendar or fiscal quarters ending prior to October 2, 1978.

(4) The program year is the year immediately following the base year.

(5) The margin trend is the compound annual rate of growth of the average percentage gross margin between the base year and the comparable year prior to October 2, 1976.

(c) *Percentage Margin Standard for Wholesale and Retail Trade.* A company satisfies the percentage margin standard if

(1) The growth in its average percentage gross margin between the base year and the program year is no greater than its margin trend minus 0.5 percentage points; or

(2) The average percentage gross margin for the program year does not exceed that of the base year.

(d) *Margin Standard for Food Manufacturing and Processing Industries.* (1) A company satisfies the margin standard if the rate of increase in the company's gross margin between the base quarter (the last complete calendar or fiscal quarter ending prior to October 2, 1978) and the corresponding quarter of 1979 does not exceed 6.5 percent plus any positive percentage growth in physical volume over the same period.

(2) The company may substitute for the base-quarter gross margin the base-quarter sales multiplied by the average percentage gross margin for the base year.

(3) Physical volume increases to be used in justifying increases in gross margins may be computed by deflation of revenues using a measure of price increases as the deflator, or by computing changes in units or tonnage sold when such units are price weighted by major product categories.

(e) *Application of the Margin Standards.* A company may compute its gross margin after adjustment for changes in the composition of sales at any reasonable level of aggregation, such as division, department, product category, or individual products, as long as such adjustments are consistently applied.

#### 705C-3 PRICE STANDARDS FOR PROFESSIONAL FEES

(a) *Coverage.* These standards apply to fees and charges for the services of physicians, dentists, lawyers, accountants, engineers, architects, and other professionals. They include all activities included in Major Groups 80 (except 805, 806, 808 and 809), 81,



891, and 893 of the 1972 *Standard Industrial Classification Manual*.

All companies that provide professional services on a fee-for-service basis, regardless of the proportion of total company revenue that is derived from professional services, are expected to comply with the professional fee standard. Companies that cannot comply with this professional fee standard are eligible for exceptions under the conditions in 705A-6.

(b) *Standards.* A company complies if the following two-part price standard is met: (1) The program-year average rate of change in fees charged, weighted by sales and/or revenues, does not exceed 6.5 percent and (2) the increase in the fee for any single service does not exceed 9.5 percent. The period used to determine dollar volume weights should be based on a period of time that is representative of normal business operations.

#### 705D DEFINITIONS

*Base-period rate of price change.* The base-period rate of price change is a sales-weighted or revenue-weighted average of the percentage price changes over the two-year period, 1976-1977, expressed at an annual rate. If desired, it may be computed using the following formula:

$$BPRC = \left( \sqrt{\sum_i S_i \frac{P_i(77)}{P_i(75)}} - 1 \right) \times 100$$

where

BPRC = the base-period rate of price change;

$P_i(77)$  = price of the  $i$ th product in the last complete fiscal or calendar quarter in 1977;

$P_i(75)$  = price of the  $i$ th product in the last complete fiscal or calendar quarter of 1975;

$S_i$  =  $i$ th-product sales or revenue share (i.e., the  $i$ th-product sales or revenues divided by total sales or revenue) in the last complete fiscal or calendar quarter in 1975; and

$\Sigma$  = the summation operator, where the subscript  $i$  runs over all products not excluded by section 705A-3.

The choice of fiscal or calendar quarters must be consistent throughout the company's calculations. If seasonal factors are important, the weights,  $S_i$ , can be calculated using data for the entire base period.

*Base quarter.* The base quarter is either (1) the company's last complete fiscal quarter prior to October 2, 1978, or (2) the calendar quarter July 1, 1978, to September 30, 1978.

*Company.* The term "company" is defined as any person, sole proprietorship, partnership, corporation, association, joint venture, estate, trust, or any other entity, however organized, including Federal, State, and local government entities. Entities that are consolidated should be consolidated in accordance with 17 CFR 210.4-01 to -09 prescribed by the Securities and Exchange Commission. The term "company" applies only to domestic business operations.

One or more parts contained within a consolidated company may be treated as a separate, single company, in which case the standards apply separately to each of those unconsolidated companies. However, this option is available only if:

(1) The unconsolidated companies maintain accounting records which permit the Council to ascertain whether the prices and profits of the unconsolidated companies accurately reflect the economic realities of their operations;

(2) Allocation of overhead is made in a consistent and reasonable manner, as if the unconsolidated companies were not commonly owned;

(3) Transfers between unconsolidated companies are valued as if they were arm's-length transactions; and

(4) Internal accounting procedures adhere to generally accepted accounting principles and procedures, consistently and historically applied.

In situations involving acquisitions and divestitures, the following procedures should be used. If historical financial records exist for companies acquired after September 30, 1975, and prior to the base quarter, the data for the acquisition may be combined with data of the acquiring company or treated as a separate company. In either case, the acquisition should be treated as if it had been acquired on September 30, 1975.

Companies acquired between September 30, 1975, and prior to the base quarter, for which historical financial records do not exist should be included in the calculations for the program year. That is, products of the acquired company should be treated in much the same manner as a new product.

In the case of companies acquired during the base quarter or program year, they should be treated as a separate company for the entire program year for price and profit calculations.

For divestitures, the parent company should exclude the divested entity from all calculations made with respect to the price standard.

*Company Pay Share.* The company pay share is the pay for all employees in the base quarter divided by company net sales and/or revenues in the base quarter. For purposes of this calculation, pay and net sales and/or revenues should represent total domestic operations unless the company cannot determine pay for domestic operations, in which case total pay and total sales should be used.

*Employee.* An employee is any individual residing in the United States who is either an employee within the meaning of Section 3121(d) of the Internal Revenue Code 26 U.S.C. or the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq.

*Future-Value Incentive Plans.* Future-value incentive plans include any long-term plans under which units (shares, stock options, awards, shares subject to option or investment amounts) are granted or issued, the compensation value of which will not be known until some future time. Examples of these include qualified and nonqualified stock options, performance share plans, performance unit plans, stock appreciation rights, restricted stock or property plans, phantom stock plans, and book value plans.

*Pay.* Pay includes the following items:

(a) The straight-time wage and salary paid during the company's customary pay period, including, where applicable, payments for shift differentials, skill differentials, and cost-of-living adjustments.

(b) Incentive pay and other forms of income such as

(1) Sales commissions and production incentive pay;

(2) Bonuses and other annual incentive compensation charged when earned (that is, when the services are performed that generate the compensation);

(3) Compensation from long-term incentive plans (other than those covered under 705B-5), new future-value incentive plans, or other similar compensation arrangements when accrued;

Job prerequisites and other forms of compensation not covered elsewhere in this definition but reported as income under the Internal Revenue Code and its interpretive regulations and rulings.

(c) Employer contributions or costs for the following fringe benefit items:

(1) Pay for time not worked (e.g., paid vacations and holidays, sick leave and other paid leave);

(2) Saving and thrift plans such as qualified stock bonus plans, qualified profit sharing plans, employee stock ownership plans, and other qualified defined contribution plans;

(3) Qualified defined benefit retirement plans;

(4) Health benefit plans;

(5) Life insurance, accident insurance, legal assistance, educational assistance, and other plans resulting in benefits to employees but not reported as income.

Pay does not include overtime wages as long as the conditions of that pay are unchanged. Also, pay does not include employer contributions for legally mandated benefit programs.

*Pay rate.* An employee unit's pay rate in any quarter should be determined in a manner consistent with the employer's accounting practices. Pay rates should be constructed as pay per straight-time hour worked. Pay rates should be the average rates for the employee unit over the quarter or as of the last customary pay period within the quarter. When employer costs for certain pay elements are incurred irregularly (for example, bonus payments and vacation pay) these items should be included according to the pay programs in effect at the end of the quarter and should be included in pay-rate computations as though they were incurred evenly over time. For employees not compensated on an hourly basis, an estimate of straight-time hours worked should be made and consistently applied.

The method used to compute pay rates should be consistently applied in all measurement periods.

*Product.* A product is any aggregation of goods (or services) established by the company for purposes of complying with the price deceleration standard, which reflects the company's customary pricing unit. In establishing the product grouping within a company, the price changes for each product group must reasonably reflect the changes in the prices of the products contained within the category. The method of establishing product groups must be consistently applied during the base period and the program year.

*Product price.* The price of a product during a quarter is computed by dividing the revenues from sale or lease of the product by the number sold or leased. Sampling of products may be used by a company: *Provided*, That the methods used comply with sound statistical procedures. Changes in list prices may be used only if percentage changes in them are representative of percent changes in actual transaction prices.

Furthermore, prices may be measured at the end of the calendar or fiscal quarter: *Provided*, That prices do not fluctuate substantially during the quarter.

*Program year.* For a company, the program year is the twelve-month period immediately following the company's base quarter.

*Program-Year Rate of Price Change.* The program-year rate of price change is a sales-weighted or revenue-weighted average of percentage changes in prices of products. If desired it may be computed using the following formula:

$$PRPC = \left( \sum_i S_i \frac{P_i(79)}{P_i(78)} - 1 \right) \times 100$$

where

PRPC = the program-year rate of price change;

$P_i(79)$  = the price of the  $i$ th product in the 1979 quarter corresponding to the base quarter;

$P_i(78)$  = the price of the  $i$ th product in the base quarter;

$S_i$  =  $i$ th product sales or revenue share in the base quarter; and

$\Sigma$  = the summation operator, where the subscript  $i$  runs over all products not excluded in 705A-3.

The choice of fiscal or calendar quarters must be consistent throughout the company's calculations. If seasonal factors are important, the weights,  $S_i$ , can be calculated using data for the entire base year. Alternatively, the same weights as used to calculate the base-period rate of change can be used.

*Rate of pay deceleration.* The rate of pay deceleration is the difference between the base rate of change of the company pay rate and the program-year rate of change of the company pay rate where

(a) The base rate of change of the company pay rate is the annual rate of change of the company pay rate over the two-year period starting in the last complete fiscal or calendar quarter of calendar 1975 and ending in the last complete fiscal or calendar quarter of calendar 1977.

(b) The program-year rate of change of the company pay rate is the percentage change in the company pay rate from the base quarter to the last quarter of the program year, and

(c) The company pay rate in any quarter is its employment cost per hour worked for all employees, including all legally mandated costs excluded from the definition of pay.

#### QUESTIONS AND ANSWERS

The following questions and answers are substantive interpretations of the price and pay standards as they apply to individual situations. They can be used as guidance for actions in similar situations that would be consistent with the intent of the program. But, companies and employee units will need to examine their own situations in light of the program to determine how they can best comply with its objectives. Since the burden of interpretation must lie with private parties, actions taken under a good faith inter-

pretation of the pay and price standards will generally be considered in compliance.

#### I. THE PRICE STANDARD

##### A. COVERAGE OF STANDARDS

Q1. Are farmers' prices covered?

A. Prices of individual farm products are excluded from a company's price calculations. However, major farm commodity prices will be monitored jointly by the Department of Agriculture and the Council on Wage and Price Stability. Where sustained price increases for major commodities in excess of the overall inflation rate are not justified by changes in costs, administrative actions to expand supply and moderate price increases will be considered. The potential actions would depend upon the specific situation.

Q2. Are food middlemen—meat packers, canners, supermarket chains, etc.—covered?

A. Yes. Because these industries have special problems in meeting the general price standard, they may instead comply with a margin standard.

Q3. Are cooperatives covered?

A. Yes. They are expected to comply with pay and price standards.

Q4. Are U.S. operations of foreign companies included?

A. Yes. U.S. subsidiaries of foreign companies are covered.

Q5. Are foreign operations of U.S. companies included?

A. No. The standards apply only to domestic operations of these companies.

Q6. Do the standards apply to United States territories and possessions?

A. Yes. The standards apply to operations of domestic or foreign companies in Puerto Rico, Guam, American Samoa, and the Virgin Islands. They do not, however, apply to operations in United Nations Trust Territories administered by the United States.

Q7. Does the program apply to tuition and fees?

A. Yes. Schools, colleges, and other nonprofit organizations are expected to comply with the pay and price standards. Increases in tuition and fees are, however, averaged in with other charges, such as room and board.

Q8. Are utility rates and other regulated fees covered by the anti-inflation program?

A. Yes. Prices determined through a Federal, State, or local government regulatory process are covered by the program. The regulatory agencies are asked to assure compliance to the fullest extent possible.

Q9. How are joint ventures to be treated?

A. A joint venture may be aggregated only if a firm owns more than 50%

of that venture's equity. If no one firm owns greater than 50% of a joint venture, then this joint venture should comply with the program as a separate company.

Q10. May a firm aggregate a nonconsolidated subsidiary?

A. No. The standards call for the aggregation only of entities which normally would be aggregated in accordance with SEC reporting requirements (17 CFR, Section 210.4-01 to 09). The Council wishes to avoid abnormal accounting practices.

Q11. Does the fact that the price standard applies to the average rate of price increase for all goods and services sold by a company mean that there is no constraint on individual product prices?

A. Price increases for individual products can exceed the price deceleration standard so long as these increases are offset by lower rates of price increase for other products. The Council, however, will monitor individual product prices and will investigate the causes of sustained increases in major categories of the price indexes that exceed an annual rate of 10 percent.

Q12. Are crude oil, natural gas, and coal included in the calculation of a company's average price change?

A. No. The prices of these products will be monitored by the Council at the overall market level.

Q13. Is it possible to be more precise about the exclusion of commodities "whose historical and current price changes can be shown to have been closely tied to price movements on an organized open exchange market, either domestic or foreign?"

A. This exclusion applies to any commodity for which there is an active organized spot market and the producer price moves closely with the exchange price. If a firm excludes a product in this category, it should be prepared to explain to CWPS the basis for that decision. The exclusion would not ordinarily apply to commodities for which there is only a futures market, nor where customer discounts are given.

Q14. How do custom products differ from new products in applying the price standards?

A. The main difference is that custom products are one-time sales of products built to the specifications of a particular buyer. Custom and new products are treated identically under the standards.

Q15. Are imports covered?

A. Goods sold to a domestic company by a foreign entity are not included in the program. Subsequent sales of imported goods by domestic companies are covered, regardless of where the goods are when title changes.



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Q16. Export prices are excluded. What about goods intended for export that are first sold to a domestic firm—for example a broker?

A. As a company cannot know for sure whether a broker will resell a product abroad or domestically, these sales are included in the price calculations.

Q17. Are air fares U.S. citizens pay to foreign carriers covered?

A. As imports, they are excluded.

Q18. Is a public utility that distributes natural gas exempt?

A. No.

Q19. Does the program apply to utility rates?

A. Yes.

Q20. Does the program apply to taxes?

A. No. But government service fees and charges are included.

Q21. Does the program apply to rents?

A. Yes. The landlord's average rent increase for all of his units should be consistent with the price standards.

Q22. Does the program apply to companies that build and sell new houses.

A. Yes. But in most cases such firms will not be able to compute a measure of price change because of the customized nature of their products. Thus, they will be expected to comply with the profit limitation.

Q23. Does the program apply to insurance premiums?

A. Yes. But, because there are some difficulties in measuring prices in this sector, some special standards may need to be developed. These will be developed and issued in the near future.

Q24. Are interest rates covered by the program? Are banks covered?

A. Interest rates are excluded from the price calculation. But banks must meet the profit margin limitation and the pay standard. There are some special problems of computing the profit margin for financial institutions. These issues will be examined and an interpretation of the profit margin limitation as it applies to their situation will be issued in the near future.

## B. COMPLIANCE

Q1. Suppose a company is forced to accept a union contract in excess of the standards. Must it still comply with the price standard?

A. Yes. If these higher labor costs preclude meeting the price deceleration standard, the firm should comply with the profit margin limitation. In any case, the company is out of compliance with the pay standard.

Q2. Does the exclusion of some product prices from the price calculations under 705A-3(a)-(e) cause problems for companies that use large amounts of these products as inputs?

A. If a company cannot comply with the price deceleration standard because of increases in the prices of these products, it may comply with the profit margin limitation.

Q3. If a company has just (after October 1) raised prices and is now not in compliance, must the company roll back prices to be in compliance?

A. Yes.

## C. COMPUTATION OF THE PRICE STANDARD

Q1. When does the program year begin for price increases? What is the base quarter?

A. If the company's fiscal quarter corresponds to the calendar quarter, the "base quarter" is the third quarter of 1978 (July through September) and the program year runs through the third quarter of 1979.

If a company has fiscal quarters that do not correspond with calendar quarters it may use as a base quarter the most recent fiscal quarter which ended before October 2, 1978. The program year for the company then includes the next four fiscal quarters.

Q2. If business is done on a contract basis, in making price calculations, should prices be included when contracts are signed or when payment is received?

A. At the time of payment. However, delivery prices determined by contracts signed before October 2, 1978, are excluded unless the contract allows for seller discretion to adjust prices, thereby allowing the seller to meet the price standard.

Q3. Must a consolidated company, which decides to separate its entities, use the same separation for compliance with the pay and with price standards?

A. Yes.

Q4. One company has many operating subsidiaries and divisions. Another company is equally complex, but it is not divided into subsidiaries and divisions. Can both of these companies disaggregate units for compliance purposes?

A. Yes, but it would be easier for the first company. At the option of the company, but subject to review by the Council on Wage and Price Stability, one or more subsidiaries or divisions may be treated as a separate, single company. Such separate entities are allowed if an accounting basis exists for separating them from the parent firm. Two separate kinds of allowable cases should be distinguished. First, if a company has followed an historical practice of separate accounting treatments with regard to the entities it wants to treat separately, such practices may be continued for purposes of measuring compliance with the program. Second, if a firm has maintained records which allow it to disaggregate historical accounting data into separate entities, such data may be used as a basis for disaggregating its entities. Newly adopted accounting procedures cannot be used to rework accounting data into new formats for purposes of separating units.

Q5. Can a diversified company comply by meeting the price standard on some operations (separate subsidiaries of operating divisions) and the profit limitation on others?

A. Yes. If the company decides to treat subsidiaries or divisions as separate entities, those units unable to meet the price standard can comply by meeting the profit margin limitation.

Q6. Should I use list or transaction prices in making price deceleration calculations?

A. Transaction prices are preferred. If, however, list prices move closely with transaction prices, they may be used.

Q7. The price standard requires full pass through of pay deceleration in excess of 0.5 percentage points. How can a firm calculate its rate of pay deceleration or pay share before the end of the program year?

A. The principle described in Section 705A-2(c) is that a company should pass through pay deceleration in excess of 0.5 percentage on the basis of expected changes or actual changes as they occur. If a company follows a reasonable and good-faith procedure, actual departure from the standard would not be treated as a failure to comply with the program.

## D. PROFIT MARGIN LIMITATION

Q1. What recourse from the profit margin limitation is available if the best two out of the last three years is abnormally low?

A. No specific provisions have been made to cover this situation. You may have a basis for claiming undue hardship under 705A-6.

Q2. Can the profit margin limitation be applied to the domestic market only, or must it be applied to all operations, domestic and international?

A. Foreign operations should be excluded from calculations of prices, profits, and revenues.

Q3. Are revenues and costs from new and/or discontinued products included in the computation of profit margins for the profit margin limitation?

A. Yes.

Q4. How should a change in depreciation accounting methods affecting profits be treated?

A. If a company has changed methods between the last 3-year period and the program year, it should recompute its profits for the two periods on a consistent basis.

Q5. Are any firms selling goods and services in the United States exempt from both the price standard and the profit limitation?

A. Yes. If products excluded under 705A-3(a)-(e) account for more than 75 percent of the company's total revenues during the four quarters prior to the program year, the company need not comply with the price standard or the profit limitation. The company would, however, be expected to comply with the pay standard.

Q6. How does the profit margin limitation apply to nonprofit organizations?

A. Instead of a profit margin limitation, a nonprofit organization would be expected to comply with an operating surplus limitation. Operating surplus is defined as operating funds less total costs and expenses including wages. The operating margin is operating surplus divided by operating funds.

## II. THE PAY STANDARD

### A. GENERAL STANDARDS

Q1. Does the pay standard mean that the average pay rates of all employee units should rise by 7 percent?

A. No. The 7-percent standard represents a ceiling for pay-rate increases. It is not a suggested target. A firm which grants 7-percent increases or less is in compliance with the standard.

Q2. Does the standard mean no one can receive more than a 7-percent raise?

A. No. In general, the pay standard imposes no limit on individual employee pay rates. Instead the standard applies to average pay rates for employee units.

### B. EMPLOYEE COVERAGE

Q1. How do you distinguish the non-union management group of employees from the nonunion nonmanagement group?

A. Companies can determine this in a fashion consistent with their past practices. In general, management employees should be those whose duties are primarily of a supervisory nature. For example, the Fair Labor Standards Act distinction between exempt and nonexempt employees could be used. Firms should not, however, alter or stretch previously used categories in order to permit pay increases above the standard for some workers at the expense of others. The intent of this provision is to ensure that nonmanagement personnel are not treated inequitably. If firms can provide alternative verification of equitable treatment of employees, they may combine these groups for purposes of determining their compliance.

Q2. Can a company define smaller employee units than management and nonmanagement?

A. Yes. Any further breakdown consistent with a company's accounting procedures is acceptable. To determine

overall compliance, the firm may compute a weighted average of the pay-rate increases for these groups, using as weights the percentages of the total pay bill paid to each group.

Q3. Does the 7-percent limit on the pay increase apply to new employees?

A. The limit does not apply to individual workers, whether they are new or old employees. But the average rate paid by a firm should not rise by more than 7 percent during the year, regardless of turnovers or increases in its workforce.

Q4. In the case of mergers, can the parent company treat its newly acquired companies as separate entities for pay standard computations?

A. Yes, if this is the method applied to price computations as well.

Q5. Are U.S. employees assigned to work in other countries subject to the pay standard?

A. No, they should be excluded from the employee groups.

Q6. Does the pay standard apply to Federal, State, and local government workers?

A. Yes.

Q7. Are pay increases mandated by State and local government regulations exempt from the pay standard?

A. Public sector employees are covered by the pay standard. If legally mandated pay increases determined under regulations existing prior to October 25, 1978 exceed 7 percent, the amount above 7 percent is excluded from the pay calculations.

### C. PAY AND PAY RATES

Q1. Increased employer contribution costs for legally mandated employee benefits are not charged against the 7-percent pay standard. Which employer costs are excluded?

A. Excluded are costs of legally mandated payroll taxes such as Social Security, Worker's Compensation, and Unemployment Insurance. In addition, the increased costs during the program year of new legally required benefits, such as paid maternity leave, changes in benefits under the recently amended Age Discrimination Act, and remaining ERISA mandated pension plan amendments should not be charged against the 7-percent standard.

Q2. With respect to the exclusion of overtime pay, what does the language "as long as the conditions of that pay are unchanged" mean?

A. A change in the conditions of overtime pay occurs when the overtime premium pay rate is changed or when the timing requirements are altered (for example by defining overtime as work beyond 38 hours rather than 40 hours). When such a change occurs during the program year, an estimate of the increased pay due to the

change must be included as a pay-rate increase.

Q3. Are cost-of-living differentials received if an employee is transferred to a higher cost-of-living area included as pay-rate increases?

A. Not if they represent continuation of an established practice to pay such differentials.

Q4. Should moving expense reimbursements be included as a component of pay?

A. No.

### D. COLLECTIVE BARGAINING UNITS

Q1. If workers in one union in a company are out of compliance, is the company out of compliance?

A. Yes. Each collective bargaining contract should meet the pay standard; a firm is out of compliance if any of its collective bargaining agreements exceed the pay standard. However, if this group represents less than 5 percent of the firm's work force, the group can (at the company's discretion) be included within the category of nonunion employees.

Q2. What about a small firm that is a party to a large collective bargaining agreement?

A. If the firm is a participant in the collective bargaining negotiations or a member of the employer association that negotiates the agreement and the agreement exceeds the standards, the firm is not in compliance.

Q3. Does the pay standard apply to collective bargaining settlements which were being negotiated prior to the President's announcement on October 24, but in which no formal agreement was signed?

A. The pay standard does not apply under any of the following circumstances:

(1) There was a written memorandum of agreement covering wages and benefits prior to October 25;

(2) There was a written management offer outstanding on October 24, and the contract is later signed with wage and benefit terms that are no higher; or

(3) There was evidence of an oral agreement covering wages and benefits prior to October 25.

Q4. Is there any power to invalidate contracts that exceed the standard?

A. No, the government has no authority or intention to invalidate labor contracts.

### E. NONUNION STANDARD

Q1. When does the program year begin for wage increases?

A. For nonunion and supervisory workers, the program year is the same for wage increases as for price increases—typically from the third quarter of 1978 through the third quarter of 1979. If a company uses a fiscal year other than the calendar year, it may



use as a base quarter the last complete fiscal quarter prior to October 2, 1978.

Q2. The pay standard for nonunion employee groups compares the base-quarter pay rate with the pay rate in the last quarter of the program year. Does this mean the company is unconstrained over the first three quarters of the program year?

A. No. Having an annual compliance standard minimizes the administrative burden placed on firms and eliminates some compliance problems which might be caused by seasonal factors and the timing of pay-rate changes. However, at any time during the program year, companies should be prepared to demonstrate that their pay situation is consistent with the 7-percent annual standard.

Q3. If a pay plan is communicated to pay-plan supervisors prior to October 23, but it is not in operation prior to that date, are increases in excess of 7 percent under this plan excluded from the pay standard?

A. No. It must either be in operation or communicated to the employees.

Q4. Section 705B-4(e) says that companies may make adjustments for shifts in the composition of the work force among distinct functional employee subgroups. What does this mean?

A. Under this option, a separate pay-rate increase may be calculated for each functional employee subgroup. If a weighted average of the resulting pay-rate increases is 7 percent or less, the employee unit is in compliance. For purposes of computing this weighted average, the subgroups' base-quarter shares of total employee-unit pay may be used as weights.

Q5. What is the effect of these adjustments on the nonunion pay standard?

A. Under the general standard as applied to nonunion groups, changes in the composition of the work force toward higher-paid employee subgroups could carry the employee unit as a whole over 7 percent even though the 7-percent limitation is satisfied for each job category. This adjustment provides nonunion groups with treatment similar to that allowed for collective bargaining units by permitting companies to assume no changes in the composition of the work force during the program year.

Q6. What is a distinct functional employee subgroup?

A. Within an employee unit, a distinct functional subgroup would be identified by type of work (for example, engineers, accountants, secretaries, production workers, etc.). As a rule, these subgroups should be those regularly identified in the company's accounting practices and pay plans as separate employee groups.

Q7. Section 705B-4(b) says that compliance may be determined on the basis of the average pay rates for continuing employees. What is the implication of this option?

A. This option allows the company to follow pay rates for the fixed population of continuing employees employed throughout the program year. This approach may be especially useful to small businesses that have changes in the composition of the work force but do not typically perform the cost-accounting analyses needed to adjust for these compositional shifts.

When excluding promotion and qualification increases under this method, the company should be prepared to demonstrate that such increases granted during the program year are consistent with historical practices.

Q8. Are step-rate increases or longevity increases legitimate promotions?

A. No. In all cases, step-rate or other similar pay-rate increases that represent moves through a pay hierarchy for work that is not substantially changed are included as pay-rate increases.

Q9. What is a qualification increase, and is it included in determining compliance with the pay standard under 705B-4(b)?

A. Qualification increases include automatic progression increases from entry levels to job-rate levels and other increases associated with discrete improvements in an employee's job-related credentials, such as completion of an educational or vocational training program. Such increases are not included in determining compliance.

Q10. Can a company demonstrate compliance with the pay standard for nonunion employee groups on a prospective basis?

A. Yes. If a company bases its pay projections on its standard budgetary practices and assumes continuation of well-established historical relationships, then it can demonstrate compliance on a prospective basis for nonunion units.

Compliance must still be determined retrospectively by comparing the last quarter of the program year with the base quarter. However, failure to meet the 7-percent standard will not constitute noncompliance if there has been a good-faith effort to comply, but unforeseen events beyond the company's control have caused the failure.

Q11. Can a nonunion unit make multi-year agreements?

A. Yes, provided they are binding on both parties. The rules for multi-year collective bargaining agreements should be applied in evaluating com-

pliance of such agreements with the standards.

#### F. VARIABLE COMPENSATION

Q1. How are sales commission and production incentive plans treated under the standard?

A. Employees operating under these plans are subject to the standard. If the unit's compensation exceeds the standard, companies must be able to demonstrate that they would have been in compliance had the unit's sales or production experience, based on physical volume, been the same as in the year prior to the program year.

Q2. Is compensation from annual incentive plans included as pay?

A. Yes. Pay from annual incentive plans, such as annual bonuses, is included as pay in the base quarter and during the program year.

Q3. How are annual incentive awards to be treated in computing pay rates?

A. This depends on whether the awards are made pursuant to a plan or on a discretionary basis. Annual bonuses or awards made according to a plan previously announced, consistently administered, and based on past practice, should be treated as pay over the period earned. For example, a bonus paid in early 1979 depending on performance over calendar-year 1978 should be treated as pay received evenly over 1978.

If the bonus payment is discretionary (not under a plan) and there is no demonstrable objective performance criterion, it should be treated as pay when payment is made (or when accrued if it is deferred). For example, all discretionary bonuses paid (or accrued) in the program year should be included as pay received evenly over the program year. Similarly, one-fourth of all bonuses paid (or accrued) in the preceding year should be treated as pay in the base quarter.

Q4. In determining the bonus amount to be included in the base rate of pay, must the company use the amortized bonus amount which was earned in the base quarter?

A. No. In determining the bonus amount to be included in the base rate of pay, the company may choose either the amortized bonus amount earned in the base quarter or the average of the corresponding amounts earned in any two of the five most recent years.

Q5. How is deferred compensation treated under the standard?

A. Deferred forms of compensation are treated as pay in the period earned regardless of when payment actually occurs. This applies to deferred compensation earned over, or averaged into, the base quarter as well as to compensation earned in the program year.

#### G. FUTURE-VALUE COMPENSATION

Q1. How are future-value incentive plans treated under the pay standard?

A. Future-value incentive plans are long-term plans under which units are granted whose value will not be known until some future time. The plans involve qualifications or contingencies which make their exact valuation uncertain, but increases in their value can be subjected to a rough 7-percent limit by limiting the number of units granted during the program year to an average increase of 7 percent per recipient.

During the program year, changes in the number of recipients eligible to receive units under these plans must be based on plans in existence prior to October 23, 1978 or on the continuation of well established past eligibility practices.

Q2. What constitutes a unit of future-value incentive compensation?

A. A unit includes shares, awards, shares subject to option, or investment amounts. In most cases, units under these plans are the number of shares under options or shares awarded. Where plans involve investment amounts, this means the number of shares times the share price at the time of award.

Q3. How do stock splits affect the limitation on the number of units to be issued under future-value plans?

A. The number of units should be adjusted to reflect stock splits and stock dividends.

Q4. Some long-term incentive plans do not run on an annual basis and have not been in place five years but do have a regular grant cycle—for example, every other year. How should the percent-increase limitation be applied to continuation of these plans?

A. The percent-increase limitation should be applied to the number of units issued in the last regular grant period under the plan.

#### H. HEALTH BENEFITS

Q1. If, based on actual experience, the cost of maintaining existing health benefits increases by less than 7 percent, does this mean that more than a 7-percent increase in other pay components may be granted?

A. Yes.

Q2. If new health benefits are added, are these included in pay-rate computations?

A. Yes. For example, if the cost of maintaining the old benefit package increases by more than 7 percent and the new benefits add an additional 3 percent, the combination of the two should be treated as a 10-percent increase on the health-benefit cost base.

Q3. Is it necessary to separate health insurance costs from a general health and welfare benefit package in

order to apply the 7-percent maintenance rule?

A. Yes, unless it is impractical to separate health insurance from other costs.

Q4. Can individual items in a health benefit package be considered separately, counting some item increases at 7 percent and others at their actual increase?

A. No. The 7-percent maintenance exclusion must be applied to the health benefit package as a whole.

#### I. DEFINED-BENEFIT PENSIONS

Q1. What is a pay-related defined-benefit pension plan?

A. These include final-average pay plans, career-average earnings plans, and other similar plans in which the level of benefits provided by the plan is related to earnings or salaries over a specified period of employment.

Q2. What is a non-pay-related defined-benefit pension plan?

A. These include plans where the benefit level is a flat dollar rate which is independent of earnings or salaries over the period employed.

Q3. For pay-related pension plans, how does one determine the employer costs attributable to increased benefits due to changes in salary levels during the program year or over the life of a new collective bargaining agreement?

A. Using standard company accounting procedures, calculate costs for the pension plan at the end of the program period at both the base-quarter and program-year salary rates; the difference between the two is the employer cost attributable to the change in pay levels and is included in the pay-rate change in determining compliance with the pay standard.

Q4. For pay-related pension plans, is it necessary to perform detailed calculations to sort out employer costs for increased benefits related to salary changes, as set forth in the preceding question?

A. No. In most cases, a simplified procedure would closely approximate the outcome of such detailed computations. In particular, in those cases where the pension plan is not amended during the program period and the benefit structure remains unchanged, it is consistent with the intent of the pay standard to exclude pension funding costs from all pay-rate calculations. This means that pension funding costs would not be included in the base pay rate nor in the program-year pay rate in determining compliance with the pay standard.

Q5. Why is an increase in benefit levels in a pay-related pension plan charged as a pay-rate increase when there has not been any amendment to the plan?

A. In order to treat pay-related and non pay-related pension plans equita-

bly. For example, a non pay-related plan that provides a pension benefit of \$10 per month per year of service would have to be amended in order to increase the pension benefit. In a pay-related plan, however, the amount of pension benefit automatically changes as salary levels change. If no distinction were made, this would generally result in benefit changes in the non pay-related plans being charged as pay-rate increases while the changes in the pay-related plans would not be charged as pay-rate increases.

Q6. For non pay-related plans, if the benefit level remains unchanged, does this mean that more than a 7-percent increase is allowable on the other components of pay?

A. Yes, since under these conditions the company may include the same dollar pension cost per hour in both the base-quarter pay rate and the program-year pay rate.

#### J. LOW-WAGE EXEMPTION

Q1. Should employees with wage rates of \$4.00 per hour or less at the beginning of the program year be removed completely from all employee units?

A. Yes. They are excluded from each employee unit for the entire program year, even if wage-rate increases carry them over the \$4.00 limit during the program year. Further, employees hired during the program year at a wage rate of \$4.00 per hour or less are also excluded.

Q2. Is there any ceiling on the pay-rate increases granted to employees exempted under the low-wage provision?

A. No.

Q3. Will employees whose straight-time wage rate is less than or equal to \$4.00 an hour, but who earn more due to incentive pay, be excluded from pay-rate computations?

A. Determination of the employee's straight-time hourly wage is based on average straight-time earnings, including incentive pay.

Q4. Should employees exempted under the low-wage provision be included in their respective employee units for the purpose of calculating additional price deceleration required by pay deceleration in excess of 0.5 percentage points?

A. Yes.

#### K. TANDEM PAY-RATE EXCEPTION

Q. In what circumstances can the tandem pay-rate exception apply?

A. In any of the following circumstances:

- (i) To maintain historical supervisory differentials;
- (ii) For union and nonunion groups of the same company;
- (iii) For union and nonunion groups in a local labor market, irrespective of



whether they belong to the same company; and

(iv) For two separate collective bargaining units.

However, in each of these circumstances, there must be a clear leader-follower relationship and the pay increases must be equal in value and directly related in timing.

#### L. PRODUCTIVITY WORK-RULE EXCEPTION

Q1. Is the principle of trading newly negotiated work-rule changes for wage increases to be applied to contract changes that make work rules more restrictive as well as relaxations in work rules or training requirements?

A. Yes; if such changes produce a demonstrable and measurable decline in productivity growth, they should be deducted from the allowable pay-rate increase.

Q2. Can the principle of productivity increases related to work-rule changes be applied to nonunion units?

A. No. The work-rule exception is intended to apply in those limited situations where companies have no alternative means of eliminating contractual work-rule restrictions that prevent improvements in productivity. This provision does unfairly discriminate against employee groups that have, in the past, cooperated with management to promote improvements in productivity. Yet, in some circumstances there are no practical alternatives to eliminating previously agreed-to restrictions except through an additional wage increase. In some cases, the unions may have previously foregone a wage increase to obtain the restriction.

Q3. Can wage increases exceed 7 percent for firms that achieve productivity gains in excess of the economy-wide average?

A. No.

#### III. SPECIAL SECTORS

##### A. FOOD MANUFACTURERS, RETAILING AND WHOLESALING

Q1. Are retail food stores covered?

A. Yes. But, because such stores have severe data problems and may not be able to calculate an adequate measure of price change for the wide range of products that they sell, an alternative standard, based on controlling margins has been provided. However, a retail store is encouraged to comply with the general price standard, if able to do so.

Q2. Must food manufacturers comply with the gross margin limitation?

A. No. They may choose to comply with the general price deceleration standard. If they cannot meet either of these standards, they should, of course, comply with the profit margin limitation.

Q3. May a company elect to comply with the margin standards by controlling markups rather than margins themselves?

A. Yes. A company may choose any alternative method of compliance that is consistent with the manner in which it conducts its business, sets its prices, and keeps its records, as long as the end result is consistent with meeting the margin standard.

Q4. How do food processors and food manufacturers meet their target dollar gross margins during the program year given the seasonal nature of the industry?

A. Food processors and food manufacturers should first calculate their base-quarter dollar gross margin. Next, they should estimate their expected average rate of increase in margin over the next 4 quarters (6.5 percent plus expected increase in physical volume). That overall increase may be divided among the 4 quarters in such a way that seasonality and normal trading patterns are observed. The targets set for each quarter are to be adjusted quarter-by-quarter after observing operating results for each quarter. If a company overshoots its target in one program quarter, it should compensate by undershooting in the next quarter or quarters, and so on, to achieve a rolling adjustment on a cumulative basis.

Q5. How do I compute the allowable percentage gross margin for a retail company?

A. Assume the percentage gross margin for the 4 quarters prior to October 2, 1978, was 44 percent, and 40 percent for the corresponding four quarters prior to October 2, 1976. The 2-year overall increase is 10 percent and the annual average rate of change is 4.88 percent. Subtract the 0.5 percentage point deceleration (4.88-0.5) to get the allowable percentage increase in the margin of 4.38 percent. The allowable percentage margin in the program year is 45.93 percent (44+1.0438).

##### B. PROFESSIONAL FEES

Q1. Does the program apply to doctors' fees, hospital charges and other medical care prices?

A. Yes. Physician, dentist and other health professional fees are covered under the professional fee standard. Drugs, pharmaceuticals, eyeglasses and other health care products are covered under the general price standards.

Hospital and nursing home care are covered under the program but standards for their services have not yet been completed. This is partly due to the more complex nature of payment mechanisms for these services and the need to coordinate the standards with Administration legislative proposals.

Health insurance is also covered under the program and price standards for health insurance as well as other types of insurance will be issued shortly.

Q2. How is the professional fee standard applied by firms which have sales of products for which the general price standard applies?

A. Companies that provide services for which the professional fee standard applies as well as goods or services for which the general price standard applies, should comply with the appropriate standard for each segment of their business separately.

Q3. Why is a 6.5 percent fixed price standard being used for professionals rather than the 0.5 percent deceleration standard applicable to firms in most other sectors?

A. Many professionals do not have the necessary information to calculate weighted average price increases to determine compliance with the general price standards.

For health professions, fee inflation has tended to be considerably higher during recent years than 6.5 percent so that the implementation of this standard should contribute to a more substantial deceleration in medical care costs.

(b) *Undue Hardship and Gross Inequity.* The Council may except a company from the application of the price deceleration standard, make adjustments to the base-period rate of price change, or alter application of the profit margin limitation to avoid extreme situations of hardship or gross inequity.

##### 705B PAY STANDARD

705B-1 *Pay Standard.* For each employee unit, the annual increase in average pay rates should be 7 percent or less.

705B-2 *Employee Units.* For the purpose of establishing compliance with the pay standard, a company must identify three types of employee units:

(a) Each group of the company's employees subject to a particular collective bargaining agreement to which the company is a party constitutes a separate employee unit.

(b) All management employees (not under a collective bargaining agreement) constitute an employee unit.

(c) All other employees constitute an employee unit.

A company need not identify separately collective bargaining units accounting for less than 5 percent of its employees. However, if a collective bargaining unit is not separately identified, the workers must be included in the "all other employees" category.

705B-3 *Application of the Pay Standard to Collective Bargaining Agreements.*

(a) A company complies with the pay standard if the annual rate of pay-rate change over the life of each collective bargaining agreement negotiated during the program year is 7 percent or less.

(b) In addition, the annual pay-rate increase may be no greater than 8 percent in any year of a multi-year agreement.

(c) For purposes of determining whether the annual rate of pay-rate change complies with the pay standard, formulas for cost-of-living adjustments should be computed on the assumption of a 6-percent annual rate of inflation in the Consumer Price Index over the life of the contract.

Dated: December 21, 1978.

BARRY P. BOSWORTH,  
Director, Council on Wage  
and Price Stability.

(FR Doc. 78-36046 Filed 12-27-78; 8:45 am)



**THURSDAY, DECEMBER 28, 1978**

**PART VI**



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**DEPARTMENT OF  
TRANSPORTATION**

**Federal Aviation  
Administration**

**AIRPORT SECURITY**

**Revision of Regulations**

**Register  
Federal Property**



[4910-13-M]

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16245]

## PART 107—AIRPORT SECURITY

## Revision of Part 107

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment revises those Federal Aviation Regulations which are designed to ensure the security of airports serving scheduled air carriers required to have screening programs. The experience of operators of those airports and the FAA has indicated that these regulations are in need of revision. In addition, it is necessary to add certain requirements, which Congress has directed the FAA to adopt. The amendment is intended to update and clarify airport security regulations, and to provide more effective protection of persons and property in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

EFFECTIVE DATE: March 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Milford T. Conarroe, Ground Operations Security Division (ACS-300), Civil Aviation Security Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8768.

## SUPPLEMENTARY INFORMATION:

## I. GENERAL

Interested persons have been afforded an opportunity to participate in the making of this amendment by Notice of Proposed Rule Making No. 77-8 issued on June 10, 1977 (42 FR 30766; June 16, 1977). For the most part the proposals made in Notice 77-8 for amending Part 107, Airport Security, are adopted by this amendment.

This amendment changes Part 107 as follows:

1. Expands the security program content requirements.
2. Revises and makes more explicit the procedures for approval and amendment of a security program.
3. Adds procedures for notifying the FAA when changed security conditions require an amendment to a security program.
4. Revises and clarifies the requirement for law enforcement officers and adds standards for their training. (As

will be noted, these standards are less burdensome than proposed, in that they provide for the use of either State or local standards.)

5. Adds procedures for requesting the use of Federal law enforcement officers.

6. Adds a prohibition against carrying a firearm, an explosive or an incendiary device, but, unlike the proposal, the prohibition is limited to sterile areas.

7. Adds a provision requiring the airport operator to make a record of certain law enforcement actions available to the FAA.

Due consideration has been given to all comments received in response to the Notice 77-8. Except as otherwise discussed in this amendment, the amendment and the reasons for it are identical to the proposal and the reasons set forth in the proposal.

Approximately 250 comments were received in response to Notice 77-8. Over half of the responses were from individuals, most of whom commented on § 107.21, relating to the carriage of weapons on airports. Comments were received from: airport operators and authorities; elements of municipal, county, and State governments; agencies of the Federal government; and outdoor sports associations and related businesses. A number of comments were received from domestic and foreign air carriers and organizations representing the aviation industry. Comments were also provided by police and security organizations.

A number of comments were received that were beyond the scope of the notice. These have not been addressed in this preamble.

A small number of commenters stated that many of the proposals in Notice 77-8 had no legal basis because the Federal Aviation Act of 1958 (Act) gives the FAA authority to issue regulations protecting persons and property against acts of criminal violence and aircraft piracy aboard aircraft only. However, in adding Section 315, Screening of Passengers, and Section 316, Air Transportation Security, (49 U.S.C. 1356 and 1357) to the Act (Pub. L. 93-366, section 202, 88 Stat. 409 (1974)), the Congress articulated the FAA's authority in this area by requiring the Administrator to provide persons traveling in air transportation and intrastate air transportation protection from acts of criminal violence and aircraft piracy. Therefore, the Administrator is authorized to prescribe regulations affecting activity on the airport, as well as aboard aircraft, when they are necessary to provide this protection.

## II. SPECIFIC SECTIONS

Comments relating to specific sections and subsections of the amendment are set out below:

## A. APPLICABILITY

A number of comments were received concerning the applicability of the part. A small number of commenters felt that section 107.1(a)(3), which would apply Part 107 to each person on an airport subject to the part, was unconstitutional or at least an unjustified extension of Section 316 of the Act, if it were to be used to bring civil action against persons found to be in possession of weapons or other prohibited articles. Some believe this rule would comply with the requirements of Section 316 if applied only to people in "sterile areas." These comments and others on proposed section 107.21, (Carriage of firearms, explosives, or incendiary devices) are discussed below.

## B. AIR OPERATIONS AREA

Concerning the definition of Air Operations Area (AOA) contained in section 107.1(b)(2), one commenter stated that helicopter operations areas should be included in the definition and another wanted to include general aviation operations. Conversely, others would exclude from the definition general aviation areas and areas under the exclusive control of Part 121 and 129 air carriers.

The FAA considers it to be more efficient for security programs to be based upon the security needs of an entire, specifically-defined area, rather than individual elements within that area. Therefore, all operations occurring within an area "designed and used for the landing, taking off, and surface maneuvering of airplanes" (including helicopter and general aviation operations) are part of the AOA. Areas that are used exclusively by helicopters are not included in the definition of an AOA because they do not pose a sufficient threat to air carrier operations subject to section 121.538.

An air carrier may limit its responsibility within an AOA to an "exclusive area" under Part 107, as adopted, for which the carrier exercises exclusive security responsibility in accordance with a written agreement between it and the airport operator.

## C. LAW ENFORCEMENT OFFICER

## 1. WARRANTLESS ARRESTS

Proposed section 107.3(b)(3) would have defined a law enforcement officer (LEO) as an individual who is, among other things, authorized to arrest for the violation, either in or out of the officer's presence, of any criminal law of the State and local jurisdictions in which the airport is located.

cated. With regard to this part of the definition the Criminal Division of the Department of Justice pointed out that many police officers of State and local jurisdictions do not have authority, without a warrant, to arrest for misdemeanors not committed in their presence. The Department of Justice recommended striking the phrase "either in or out of his presence" from the definition so as to conform it to the arrest authority ordinarily possessed by law enforcement officers for misdemeanor offenses.

The FAA recognizes that arrest power is frequently limited as between misdemeanors and felonies, in that police officers often do not have authority, without a warrant, to arrest for misdemeanors committed outside their presence. Upon further consideration, the FAA has determined that it is not essential that officers have authority to arrest for misdemeanors committed outside their presence. Therefore, the LEO provisions, as adopted, require only that an LEO have authority to arrest with or without a warrant: (1) For a crime committed in the officer's presence, and (2) for a felony, when the officer has reason to believe that the suspect has committed it.

## 2. SCOPE OF AUTHORITY

Some commenters also believed that a limited authority to enforce only statutes relating to aviation security would be adequate for officers supporting security programs. A few were of the opinion that Federally-mandated "guards" had no reason to enforce State or local laws. Authority to arrest for violations of the criminal law of the State and local jurisdiction in which the airport is located is necessary to provide the level of law enforcement contemplated by Section 316 of the Act, "adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy." It should be noted that locally deputized LEOs need not have the authority to arrest for Federal offenses. The majority of enabling State statutes and local ordinances provide authority to the deputized persons to arrest for both local and Federal offenses; however, a few States do not. In these instances the LEO's authority to arrest for local violations that are comparable to Federal violations has proven adequate under the current rule and is expected to be sufficient under this amendment.

## 3. PRIVATE LAW ENFORCEMENT PERSONNEL

Finally, a number of commenters also pointed out that many types of peace officers, cadets, trainees, and, particularly, private law enforcement personnel would be excluded from participation in security programs.

On the contrary, this amendment does not preclude the use of any type of police officer, including a privately employed officer, if the officer has the arrest authority specified in section 107.17 and meets the other requirements of Part 107. Whether an individual employed by a private security force could perform the LEO function would depend on the existence of appropriate State statutes or local ordinances which confer the arrest power required by section 107.17. This authority is necessary to provide for immediate law enforcement action in situations in which the threat of criminal violence or aircraft piracy demand it.

In this amendment, all the requirements that must be met for a person to be used as an LEO, including those in proposed § 107.1(b)(3), have been placed in § 107.17. As adopted, § 107.1(b)(4) defines a law enforcement officer as "an individual who meets the requirements of § 107.17."

## D. SECURITY PROGRAM GENERALLY

## 1. DEGREE OF SECURITY

Some commenters mistakenly believed that new § 107.3(a)(1) calls for absolute security when it requires that the airport operator adopt and carry out a security program that "provides for the safety of persons and property traveling in air transportation against acts of criminal violence and aircraft piracy." The rule does not require the airport operator to go to unreasonable extremes to meet all possible security threats.

## 2. REVISION OF SECURITY PROGRAMS

One commenter was concerned that the proposed revisions would require every existing security program to be rewritten. Although certain new requirements in Part 107, including training provisions, may call for an amendment to security programs, no other substantial revisions will be necessary if the program otherwise meets § 107.3(a)(1).

## E. SECURITY PROGRAM CONTENTS

## 1. NECESSITY OF REQUIREMENTS

A number of commenters felt that the requirements in § 107.3(b), as to the content of the security program, would result in a vast increase in the amount of information required in the security program. They described these requirements as unnecessary, bureaucratic, and burdensome, particularly on smaller airports with limited staffs and resources.

Many of the requirements of new § 107.3(b) are already met in security programs which were submitted under the current § 107.3. The requirements added to new § 107.3(b) are necessary

to ensure the effectiveness of each security program in accordance with Section 316. Since most of the requirements in new § 107.3(b) are contained in existing security programs, the increase in overall workload in administering the program will not be significantly increased. In addition, standards for complying with the new requirements are readily available, which will lessen any additional workload. As a result of these factors, the new program should not be burdensome.

## 2. DESCRIPTION OF THE AOA

Some commenters were convinced that listing the dimensions of the AOA serves no purpose, particularly if the areas are graphically illustrated. Others objected to the listing of areas adjacent to the AOA unless the areas were specified by type in the rule or determined solely by the airport operator, and were limited to areas which posed a genuine threat of hijacking.

It is necessary for the airport operator to describe the areas over which it proposes to maintain security so that the FAA can determine the adequacy of the security program and approve it. Specific dimensions are necessary in order for the AOA to be precisely described and a graphic description may not be sufficient for this purpose. In addition to these dimensions, it is necessary for the AOA to include pertinent features, such as terrain and barrier composition.

The only areas other than AOA's that need to be identified in security programs in accordance with § 107.3(b)(2) are those that clearly present a danger to persons and property in the AOA's.

## 3. DESCRIPTION OF FACILITIES, EQUIPMENT AND TRAINING

Several commenters objected to the requirement of including procedures and a description of facilities and equipment used to protect AOA's, as duplicating information contained in security programs required by Parts 121 and 129. Similarly, one commenter considered a description of LEO support and LEO training programs to be duplicative, unwarranted, and unnecessary.

A clear description of the procedures, equipment, and facilities intended to be used to secure the AOA is needed to evaluate the program for approval and determine the effectiveness of its implementation in accordance with § 107.13. For the same reason, a description of the law enforcement support and LEO training is also needed.

## 4. ALTERNATE EMERGENCY PROCEDURES

A number of commenters objected to requiring the description of alternate



emergency procedures, as too broad, too narrow, or not needed. Section 107.3(b)(6) does not require airport operators to develop alternate security procedures to be used during emergencies and other unusual conditions. These procedures must be included in the security program only if the airport operator has developed them. Section 107.3(b)(6), as adopted, clarifies this requirement. It should be noted that this section is intended to complement, not duplicate, the requirement in §139.55 for an airport emergency plan.

#### 5. IMPLEMENTING DOCUMENTS

Commenters also objected to the requirement that implementing documents be included in the security program. Proposed §107.3(b)(8) does not require airport operators to include all implementing documents in their security programs. Rather, it allows them to avoid duplication by appending to the security program already existing documents which contain the information required by §107.3(b), without having to restate the information elsewhere in the program. This provision has been deleted and a new paragraph (c) has been added to §107.3 to make this clear.

#### F. SECURITY PROGRAM AVAILABILITY

With respect to the availability of the security program, as provided in proposed paragraphs (c) and (d) of §107.3 (adopted as paragraphs (d) and (e)), one commenter would have the security program available to all air carriers served by the airport and another would have it available to all FAA personnel assigned to inspect the airport. One commenter stated that airport operators already restrict security program information, whereas another felt that the information should be made available to all airport users. A few believed that the provisions conflict with the Freedom of Information Act and the Executive Orders regarding security classifications.

Under paragraph (e) the airport security program is available only to those persons who have an operational need-to-know. The thrust of paragraphs (d) and (e) is to ensure that a copy of the security program is maintained and that it is made available to those inspectors who must monitor its implementation. The airport security program contains sensitive information of inestimable value to those who would commit offenses against civil aviation. In recognition of this fact, the Congress provided, in Section 316 of the Act, for the Administrator to protect that type of information by prohibiting disclosure if it would be "detrimental to the safety of persons traveling in air transportation." Congress specified that disclosure would

not be required, notwithstanding any provision of the Freedom of Information Act that would otherwise be applicable. Moreover, these provisions are not contrary to any Executive Order applying to national security. Therefore, under paragraph (e), the airport operator must restrict access to its security program to those who have an operational need-to-know.

#### G. CHANGED CONDITIONS AFFECTING SECURITY

With respect to §107.7, which contains the procedures to be followed if there is a change in conditions on the airport which affects security, one commenter requested clarification as to who determines when a security program becomes inadequate. Section 107.7 requires the airport operator to make the initial determination as to the program's continued adequacy after a change in conditions occurs. This determination would be subject to FAA review.

#### H. AMENDMENT OF SECURITY PROGRAM BY AIRPORT OPERATOR

##### 1. FIELD OFFICE INVOLVEMENT

With respect to the procedures in §107.9 for amending security programs by airport operators, one commenter believed that they derogate the Air Transportation Security Field Office's responsibility in favor of the Regional Office. Another felt that the Regional Director should be able to modify proposed amendments. Although new §107.9 provides specific procedures for submission of requests for amendment directly to the Regional Director, the FAA sees no reason to provide the Regional Director with specific authority to amend a proposal, since it is expected that modification at an early stage can be accomplished by mutual agreement between the Regional Director and the airport operator. It should be noted that when amendments are submitted to the Regional Director, the involvement of the operational field element in review of these will not be changed.

##### 2. COORDINATION WITH TENANTS

Another commenter believed that each air carrier operating on an airport should approve in writing each proposed amendment. Although coordination of the security program provisions with air carrier tenants would be a reasonable method of ensuring their cooperation, understanding, and support, the FAA believes that it would be impractical for the airport operator to be required to submit proposed amendments to the tenants for their prior written approval.

#### 3. REGIONAL DIRECTOR APPROVAL

One commenter wanted the failure of the Regional Director to notify the airport operator in writing of approval or disapproval of the amendment to constitute approval. The FAA believes under most circumstances, 15 days should be sufficient for approval or disapproval by the Regional Director. Every effort will be made, including close cooperation with the airport operator, to ensure that a decision is made within this time period. However, it would not be in the public interest to provide for automatic approval after a specific time on matters dealing with aviation safety.

#### I. AMENDMENT TO SECURITY PROGRAM BY FAA

Concerning amendments to security programs by the FAA under §107.11, one commenter felt that the Administrator should approve all amendments for the purpose of standardization. A small number of commenters were of the opinion that airport operators should be granted the same period for response as the Administrator under §107.9, i.e., 30 days instead of seven.

The FAA believes that, since security programs are approved by the Regional Director, the Director should have the authority to amend these programs under ordinary circumstances. Complete standardization is neither possible nor desirable, because airports have security problems of an individual character. However, to the extent that uniformity is possible, it will be effected through FAA security policy.

The seven-day period for response to amendments proposed by the FAA has been in use as a minimum time period for over five years without any known problem. However, after consideration of the comments, the FAA agrees that a minimum response period of 30 days would be more reasonable. Therefore, the section, as adopted, has been changed to provide for this response period.

#### J. SECURITY OF AIR OPERATIONS AREAS

##### 1. AIRPORT TENANT RESPONSIBILITY

A number of commenters noted that the provisions of proposed §107.13 would eliminate the exceptions contained in current §§107.3(a)(2)(i)(d), 107.9(b), and 107.11(b)(2). These exceptions relieve the airport operator of the responsibility for controlling unauthorized access to, and requiring personal and vehicle identification for, AOA's that are exclusively occupied or controlled by an air carrier required to have a security program under §121.538.

Several commenters argued that the change would give responsibility to airport operators for areas over which

they might exercise little or no control. They referred to the provisions of long term lease arrangements or other legal restrictions, and asserted that airport operators would have no power to demand compliance. Others contended that airport operators are not economically or physically capable of exercising this responsibility. Some commenters argued that each tenant has responsibility, or should be delegated responsibility, for security in its own leased area. A few felt that there would be "confusion and conflict."

After consideration of these comments, the FAA has determined that the airport operator should not be required to share the responsibility for control of persons and ground vehicles entering, and moving within, an air carrier's exclusive area, and §107.13, as adopted, provides this relief. An "exclusive area" is defined in new §107.1(b)(3) as that part of an AOA for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with §129.25.

Although an area may be exclusively controlled or occupied by an air carrier, it can have an effect on the security of other areas of the airport. The closest coordination of security activities is needed between all airport tenants, including those subject to §§121.538 and 129.25. The airport operator is in the best position to act as the necessary focal point for this coordination.

Section 107.13 provides that the airport operator is not required to exercise the control functions specified in that section with respect to an air carrier's exclusive area. To ensure a coordinated security effort, the rule requires that the procedures, facilities, and equipment used by the air carrier to perform those functions must be appended to, or described in, the airport security program. The program must also contain the procedures by which the air carrier will notify the airport operator when procedures, facilities, and equipment are not adequate to perform the control functions.

The FAA agrees that airport tenants are frequently in the best position to know their own security needs and, because of their direct involvement, are the ones who can effectively implement procedures in their areas. An effective overall airport security program can be achieved only if all concerned are involved in its design and implementation.

It should be emphasized that nothing in §107.13 prevents any airport tenant from accepting responsibility of the security of its leased area, or from carrying out its own security pro-

gram. The tenant's program and the airport security program must be compatible; however, this can be achieved effectively by making appropriate sections of all tenants' security programs, including those of air carriers, a part of the airport security program.

#### 2. SECURITY COSTS

Some airport commenters were concerned that they would have substantially increased costs because of the need for added patrols, guards and other added measures. Air carrier commenters were also concerned because they anticipated that airport operators would pass their increased costs on to them, or require them to have costly security measures or facilities beyond those currently required by the air carrier's FAA approved security program.

The FAA believes that there is little likelihood of increased costs for either airport operators or airport tenants, including air carriers, as a result of §107.13, as adopted. Where the security measures of tenants other than air carriers are already adequate, the provision does not require the airport operator to provide any additional security measures, and, the current practice of the acceptance of responsibility by these tenants may be continued. Second, it is not anticipated that any additional air carrier security measures will be needed where the level of security presently provided, pursuant to an FAA approved security program, is already acceptable. While modification of specific measures or procedures used by an air carrier at particular airport may be necessary to achieve compatibility with the airport's security program, this should not result in a significant overall cost increase.

#### 3. ACCESS TO AOAS

A small number of commenters on §107.13 would substitute the word "controlling" for "preventing" in paragraph (a), which requires control of access to each AOA, including methods for "preventing" entry by unauthorized individuals and ground vehicles. Section 107.13(a) merely requires items described in the security program to be put into use. It does not impose absolute liability for unauthorized entry on the airport operator. Therefore the FAA believes the suggested substitution is unnecessary.

#### 4. UNAUTHORIZED PERSONS AND VEHICLES

Two commenters requested a definition of "unauthorized persons and ground vehicles." For the purpose of §107.13, an unauthorized person or ground vehicle is one whose entry is not approved by the airport operator or by the air carrier, for an exclusive area. Procedures for determining which persons and ground vehicles are

authorized must be set out in the security program.

#### 5. MEANS OF IDENTIFICATION

Some commenters believed personal recognition as a means of identification is untrustworthy and recommended the use of identification media in all cases. Personal recognition is accepted by security experts and is used in the most secure areas, such as top secret facilities, as the most trustworthy system of identification. It is more useful than other systems of identification at small, low volume airports. The requirement of carrying identification media under all conditions has therefore been eliminated.

#### 6. CLARIFYING CHANGES

For clarity, changes to certain language have been made in §107.13. The word "contained" in the introductory clause in §107.13 is replaced with the word "described." In paragraph (a) the words "or attempted penetration" have been added.

#### K. LAW ENFORCEMENT SUPPORT

##### 1. RESPONSE TIME

In regard to the law enforcement support required by §107.15, some commenters endorsed the section as written and applauded the increased flexibility it provides. Others agreed with the concept, but were of the opinion that a required one-minute response, whether stated in the rule or established as a condition for approval of security programs, was unrealistic. Some reasons given for this opinion were that such a restriction would limit the officers to the vicinity of the checkpoint, and would effectively eliminate the intended flexibility. Of those who favored the flexibility, but who also objected to the one-minute response constraints, a small number observed that a maximum of three minutes with an average response of one minute was more realistic. In this regard, it was noted by one commenter that part 139 provides for a period between three and four and one-half minutes for emergency vehicle response.

New §107.15 allows airport operators to adopt, with FAA approval, the most efficient system of law enforcement support to meet the individual needs of the vast variety of airports and conditions. The Federal Aviation Act of 1958, as amended, requires, and experience at United States airports demonstrates the need for, law enforcement presence. That same experience and the experience at airports in other countries indicates that the specific form of LEO presence should vary depending on a number of factors including the volume of passenger traffic



and the configuration of the terminal screening point.

In the preamble of NPRM 77-8, the FAA suggested one minute as the maximum permissible time under the current conditions. It is not possible to specify a minimum response time in the regulation, because it is necessary to evaluate the individual characteristics of the airport and the specific capability of the support system being proposed. Minimum response time for emergency vehicles under Part 139 should not be compared with those for security threats since the distances involved and the nature of the response are not the same.

## 2. FLEXIBLE RESPONSE SYSTEM

Other commenters felt that the time-tested deterrent of the visible presence of an officer at the screening point and the protection provided to screening personnel and passengers by "front line" physical presence could not be provided by a flexible response system. A few contended that a flexible response system lacked the capability to interdict hijackers, terrorists, and other persons threatening criminal violence.

It should be emphasized that not all airports have configurations that will permit a flexible system of LEO support in lieu of stationing an LEO at each screening point. Moreover, even at an airport that lends itself to a flexible system, some screening points may still require that an LEO be stationed at the screening point. In addition, LEO visibility does have an important deterrent effect and must be considered in the development of any support system in which the LEO is not physically located at the screening point.

## 3. LEGAL OBJECTIONS

In its comments the Criminal Division of the Department of Justice (DOJ) took the position that the Congress, in enacting Section 316 of the Act, endorsed the LEO's presence at the screening point as prescribed in § 107.4, which had already been adopted. It suggested that, in view of this and the recent history of the effectiveness of the LEO's presence at the screening point, the rule should require a provision in security programs for law enforcement presence at the screening point as well as other airport areas requiring that presence.

The DOJ indicated that "presence" could contemplate an LEO patrolling in the immediate area of the screening point, but that proposed § 107.15 contains very broad standards which may not provide for a quick law enforcement response. For this reason it suggested that the rule provide that the response not fall below a minimum interval of time, arguing that the LEO

cannot be "present" at the screening point within the ordinary meaning of the word if the response time to the screening point is greater than one minute. In addition, the DOJ contended that because the regulation is so broadly structured and because the physical designs of the nation's airports, as well as the security devices and methods to be used at each of those airports, could vary greatly, a subjective determination by the FAA would be required in each instance to determine whether or not each individual airport operator was in compliance.

The FAA does not agree with the DOJ's position that Section 316, in effect, requires the presence of an LEO at the screening point in every case. The FAA recognizes that the Congress, in enacting Section 316, statutorily endorsed the security policies and procedures of the FAA that were in effect at the nation's airports at the time. However, although it is clear that the Congress intended that the level of aviation security be maintained and that security programs be uniformly effective, it chose not to specifically require the LEO to be physically located at the screening point. Instead it provided that the LEO presence at the airport be "adequate to ensure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy."

In so doing, the Congress left to the Administrator the technical decision as to what law enforcement presence is adequate to provide this protection at each airport. While law enforcement presence demands a security program which provides an effective response to each screening point, it does not preclude the use of more efficient and effective systems of LEO support where the same or a higher level of security would result. In view of this the FAA believes that adoption of the proposed rule is consistent with the explicit directive and the intent of Congress.

As noted by the DOJ, § 107.15 does not contain specific directives as to how law enforcement support is to be provided. However, for a security program to be approved, it will have to describe the law enforcement support provided by the airport operator with sufficient specificity to allow an evaluation of its potential effectiveness and a determination of the level of security provided. Moreover, from the inception of this program in 1973, all airport security programs, including those providing for law enforcement support, have been approved on an individual basis predicated on an evaluation of the particular system. For this reason, the FAA does not anticipate

any difficulty in determining whether a program provides for adequate law enforcement visibility and for an effective response to each passenger screening station.

## 4. SCREENING PROCESS

A few commenters also advocated the concept of one person carrying out the both screening process and the law enforcement functions at certain small airports. The FAA has conducted tests of systems that would allow the use of one person to carry out both the screening process and the law enforcement functions. These tests have shown that these systems can provide adequate security, and they are being authorized by the Administrator where appropriate.

## L. COST OF LAW ENFORCEMENT SUPPORT

Generally, all the commenters on proposed § 107.15(c), which would require the airport operator to provide law enforcement officers to support passenger screening systems required by Part 129, were concerned with the cost of, and the payment for, this service. The principles of comity and reciprocity were advanced by some as reasons for requiring the United States Government to bear all the costs involved. Others believed that the foreign air carriers should pay for their own security in the United States.

Meeting the costs of compensation for law enforcement services is an economic issue requiring resolution by the airport operators, the air carriers (both foreign and domestic) and the Civil Aeronautics Board. However, the United States' position has been that security is a service which should be paid for by the recipient of that service through the passenger fare structure, as are other safety-related operating costs incurred by the air carrier. Therefore, the cost of law enforcement support for passenger screening which is charged to the air carrier by the airport operator can be expected to be passed on to the passenger.

## M. LAW ENFORCEMENT OFFICERS

### 1. UNIFORMS

There were several comments concerning the requirement in § 107.17(a)(2) that LEOs be in uniform. Two commenters felt that the police administrator (or an equal) should prescribe dress for officers, since a uniform might not be advantageous under all circumstances. One commenter remarked that some off-duty policemen, who might be used as airport LEOs, are prohibited from wearing their uniforms by departmental regulations.

The FAA believes uniforms are essential for public recognition. Moreover, where the flexible response con-

cept is adopted with officers patrolling in the terminal rather than stationed at the screening point, there is an even greater need for the LEO to be immediately recognizable as a police officer, both by the public and by fellow officers. The design and style of the uniform will remain the prerogative of the responsible agency; however, the uniform must be one that can be easily recognized by the traveling public as a police uniform.

## 2. TRAINING PROGRAMS

A few commenters applauded the FAA for setting high standards for training programs. Others noted that, as proposed, the standards were unnecessarily stringent and would require the replacement of many security personnel at a greatly increased and unjustified cost. A large number of the commenters felt that the FAA should establish only the minimum standards, and that they should be the same as those of the local jurisdiction furnishing LEO support. In addition, a number of commenters noted that many aspects of regular police duties are not required to adequately support an airport security program and that establishing standards that would call for training to meet the broadest spectrum of police duties is not necessary.

After further consideration, the FAA has determined that proposed paragraph (b) of § 107.17 (adopted as § 107.17(c) and (d)) should be modified in response to the public comments received. Either the State or local training standards will be adequate for law enforcement officers who protect persons and property in air transportation. Further, the scope of the training need only cover those aspects of police duties necessary to adequately support the airport security program. Where no State or local standards are set down, the airport operator must present a training program acceptable to the Administrator. The FAA will work with the airport operator to tailor training requirements to the airport's needs.

Private law enforcement personnel have always been acceptable and nothing in this rule is designed to preclude their use. However, standards required for the State or local police must also be met by private law enforcement officers.

## N. CARRIAGE OF FIREARMS, EXPLOSIVES AND INCENDIARY DEVICES

### 1. GENERAL COMMENTS

Most of the commenters to Notice 77-8 made reference to proposed § 107.21 which would have provided that no person on an airport may have any firearm, explosive, or incendiary device, on or about that individual's person or property in violation of any

applicable State or local law. A majority of these commenters expressed views on no other section.

Commenters in opposition to the proposal believed that the rule was unnecessary, arguing that local laws are adequate to cope with the existing situation. Many of the commenters noted that the wide variance in the weapons laws could lead to an unacceptable lack of uniformity. Others felt that passengers would be in peril of many local laws both existing and those which might be enacted. Some critics pointed out that, although hijackings in the United States have declined, this proposal expanded the FAA role, not only to the terminal area, but to the entire airport. These critics felt that the rule would do nothing to stop hijacking while it would infringe on the rights of persons who may or may not be in air transportation as defined in the Act. In the same vein, they were of the opinion that if the rule were not restricted to the area between the airplane and the screening point, the provision would be unrealistic, repressive, and lead to "sterile" airports.

A number of commenters endorsed the objectives of this section, but argued that it could be redrafted to make it more realistic. Most of these commenters suggested that the rule be modified to take effect between the screening point and the aircraft.

The FAA agrees that the only place on the airport where, as a practical matter, illegal firearms, explosives, or incendiary devices in a person's possession are likely to be discovered is at the passenger screening point. Further, should a weapon be found at a point on the airport other than the screening point or within a sterile area, it would remain subject to any local laws prohibiting or limiting the carriage of weapons. Modifying the rule to use the screening point and sterile area would allow the elimination of the reference to local laws in the rule.

For these reasons, the FAA has modified this section by prohibiting unauthorized carriage of firearms, explosives, or incendiary devices by persons in or entering sterile areas or presenting themselves for inspection at established passenger screening points. It should be noted that the rule does not prohibit the legal carriage of firearms for sporting or other purposes when those firearms are not accessible to unauthorized persons in a sterile area. It also specifies those persons to whom it does not apply because of their need to carry a firearm in the performance of their duty.

## 2. CONSTITUTIONAL OBJECTIONS

As already noted, a small number of commenters objected to proposed

§§ 107.1(a)(3) and 107.21 as unconstitutional, and as an unjustified extension of Section 316 of the Act. One implied that the proposal violated Article Four, Sections One and Two, the full faith and credit clause and the privileges and immunities clause. Another commenter asserted that the proposal was an "inappropriate impediment" to interstate commerce and, therefore, unconstitutional under Article One, Section Eight, the commerce clause. Finally, some commenters contended that the proposal violated the Second Amendment right of the people to keep and bear arms and violated a general right to self-protection.

The FAA does not consider these constitutional arguments to have merit. The full faith and credit clause does not prohibit the FAA from making the carriage of a weapon a violation merely because its carriage is permitted under the laws of a State. The privileges and immunities clause is inapplicable in that it does not prohibit the Federal Government from imposing standards on the carriage of weapons.

As to the commerce clause, the addition of Section 316, Air Transportation Security, to the Federal Aviation Act of 1958, was clearly a reasonable exercise of the Congress' broad authority under the Constitution to regulate commerce. Moreover, § 107.21 is within the Congressional mandate in Section 316 to protect persons and property aboard aircraft in air transportation and intrastate air transportation against acts of criminal violence and aircraft piracy.

Finally, while the Second Amendment protects the right of the people to bear arms, it does not confer an absolute right on the individual to carry a weapon at all times and in all places.

## O. RECORDS

In response to the record requirements of § 107.23, a few commenters said they did not oppose the requirement as long as requests are restricted to records which are reasonably available, pertain to the immediate disposition of detainees, and apply only to aviation security matters. Others felt that the FAA should generate its own records or compensate airport operators for maintaining them. A few believed there was no cost-benefit to this provision. A small number stated that the proposal duplicated air carrier responsibilities and suggested that the burden should either rest on the air carriers entirely or be completely eliminated.

Accurate information relating to the operation of the civil aviation security program is essential for the evaluation of its effectiveness, for determining its future direction, and for meeting the Congressional requirement for semi-



nual reports in Section 315 of the Act. The FAA believes that the airport operator is best qualified to ensure that this information is maintained and made available.

As adopted by this amendment, § 107.23 will become effective 30 days after notice has been published in the FEDERAL REGISTER that the requirements of that section have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

#### ADOPTION OF THE AMENDMENT

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended effective March 29, 1979, as follows:

1. Compliance with § 107.23 is not required until 30 days after a notice of approval of the requirements of that section by the Office of Management and Budget is published in the FEDERAL REGISTER.

2. Part 107 is revised to read as follows:

#### PART 107—AIRPORT SECURITY

Sec.

- 107.1 Applicability and definitions.
- 107.3 Security program.
- 107.5 Approval of security program.
- 107.7 Changed conditions affecting security.
- 107.9 Amendment of security program by airport operator.
- 107.11 Amendment of security program by FAA.
- 107.13 Security of air operations areas.
- 107.15 Law enforcement support.
- 107.17 Law enforcement officers.
- 107.19 Use of Federal law enforcement officers.
- 107.21 Carriage of firearms, explosives, or incendiary devices.
- 107.23 Records.

**AUTHORITY:** (Secs. 313, 315, 316, and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, and 1421); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

#### § 107.1 Applicability and definitions.

(a) This part prescribes aviation security rules governing—

(1) The operation of each airport regularly serving scheduled operations of a certificate holder to whom § 121.538 of this chapter applies;

(2) The operation of each airport regularly serving scheduled operations of a permit holder to whom § 129.25 of this chapter applies; and

(3) Each person who is in or entering a sterile area on an airport described in paragraph (a)(1) or (a)(2) of this section.

(b) For purposes of this part—

(1) "Airport Operator" means a person who operates an airport regularly serving scheduled operations of a certificate holder or a permit holder to whom § 121.538 or § 129.25 of this chapter applies;

(2) "Air Operations Area" means a portion of an airport designed and used for landing, taking off, or surface maneuvering of airplanes;

(3) "Exclusive area" means that part of an air operations area for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25;

(4) "Law enforcement officer" means an individual who meets the requirements of § 107.17; and

(5) "Sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved air carrier passenger screening program or a program used in accordance with § 129.25.

#### § 107.3 Security program.

(a) No airport operator may operate an airport subject to this part unless it adopts and carries out a security program that—

(1) Provides for the safety of persons and property traveling in air transportation and intrastate air transportation against acts of criminal violence and aircraft piracy;

(2) Is in writing and signed by the airport operator or any person to whom the airport operator has delegated authority in this matter;

(3) Includes the items listed in paragraph (b) of this section; and

(4) Has been approved by the Regional Director.

(b) Each security program required by paragraph (a) of this section must include at least the following:

(1) A description of each air operations area, including its dimensions, boundaries, and pertinent features.

(2) A description of each area on, or adjacent to, the airport which affects the security of any air operations area.

(3) A description of each exclusive area, including its dimensions, boundaries, and pertinent features, and the terms of the agreement establishing the area.

(4) The procedures, and a description of the facilities and equipment, used to perform the control functions specified in § 107.13(a) by the airport operator and by each air carrier having security responsibility over an exclusive area.

(5) The procedures each air carrier having security responsibility over an exclusive area will use to notify the airport operator when the procedures, facilities, and equipment it uses are not adequate to perform the control functions described in § 107.13(a).

(6) A description of the alternate security procedures, if any, that the airport operator intends to use in emergencies and other unusual conditions.

(7) A description of the law enforcement support necessary to comply with § 107.15.

(8) A description of the training program for law enforcement officers required by § 107.17.

(9) A description of the system for maintaining the records described in § 107.23.

(c) The airport operator may comply with paragraph (b) of this section by including in the security program as an appendix any document which contains the information required by paragraph (b).

(d) Each airport operator shall maintain at least one complete copy of its approved security program at its principal operations office, and shall make it available for inspection upon the request of any Civil Aviation Security Inspector.

(e) Each airport operator shall restrict the distribution, disclosure, and availability of information contained in the security program to those persons with an operational need-to-know and shall refer requests for such information by other than those persons to the Director of the Civil Aviation Security Service of the FAA.

#### § 107.5 Approval of security program.

(a) Unless a shorter period is allowed by the Regional Director, each airport operator seeking initial approval of a security program for an airport subject to this part shall submit the proposed program to the Regional Director at least 90 days before any scheduled passenger operations are expected to begin by any certificate holder or permit holder to whom § 121.538 or § 129.25 of this chapter applies.

(b) Within 30 days after receipt of a proposed security program, the Regional Director either approves the program or gives the airport operator written notice to modify the program to make it conform to the applicable requirements of this part.

(c) After receipt of a notice to modify, the airport operator may either submit a modified security program or petition the Administrator to reconsider the notice to modify. A petition for reconsideration must be filed with the Regional Director.

(d) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the notice to modify and either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Regional Director to withdraw or amend the notice to modify, or by affirming the notice to modify.

#### § 107.7 Changed conditions affecting security.

(a) After approval of the security program, the airport operator shall follow the procedures prescribed in paragraph (b) of this section whenever it determines that any of the following changed conditions has occurred:

(1) Any description of an airport area set out in the security program in accordance with § 107.3(b)(1), (2), or (3) is no longer accurate.

(2) The procedures included, and the facilities and equipment described, in the security program in accordance with § 107.3(b)(4) and (5) are not adequate for the control functions described in § 107.13(a).

(3) The airport operator changes any alternate security procedures described in the security program in accordance with § 107.3(b)(6).

(4) The law enforcement support described in the security program in accordance with § 107.3(b)(7) is not adequate to comply with § 107.15.

(b) Whenever a changed condition described in paragraph (a) of this section occurs, the airport operator shall—

(1) Immediately notify the FAA security office having jurisdiction over the airport of the changed condition, and identify each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved; and

(2) Within 30 days after notifying the FAA in accordance with paragraph (b)(1) of this section, submit for approval in accordance with § 107.9 an amendment to the security program to bring it into compliance with this part.

#### § 107.9 Amendment of security program by airport operator.

(a) An airport operator requesting approval of a proposed amendment to the security program shall submit the request to the Regional Director. Unless a shorter period is allowed by the Regional Director, the request must be submitted at least 30 days before the proposed effective date.

(b) Within 15 days after receipt of a proposed amendment, the Regional Director issues to the airport operator, in writing, either an approval or a denial of the request.

(c) An amendment to a security program is approved if the Regional Director determines that—

(1) Safety and the public interest will allow it, and

(2) The proposed amendment provides the level of security required by § 107.3.

(d) After denial of a request for an amendment, the airport operator may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the Regional Director.

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(e) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the denial and either approves the proposed amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(f) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Regional Director to approve the proposed amendment or affirming the denial.

#### § 107.11 Amendment of security program by FAA.

(a) The Administrator or Regional Director may amend an approved security program for an airport, if it is determined that safety and the public interest require the amendment.

(b) Except in an emergency as provided in paragraph (f) of this section, when the Administrator or the Regional Director proposes to amend a security program, a notice of the proposed amendment is issued to the airport operator, in writing, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment. After considering all relevant material, including that submitted by the airport operator, the Administrator or the Regional Director either rescinds the notice or notifies the airport operator in writing of any amendment adopted, specifying an effective date not less than 30 days after receipt of the notice of amendment by the airport operator.

(c) After receipt of a notice of amendment from a Regional Director, the airport operator may petition the Administrator to reconsider the amendment. A petition for reconsideration must be filed with the Regional Director. Except in an emergency as provided in paragraph (f) of this section, a petition for reconsideration stays the amendment until the Administrator takes final action on the petition.

(d) Upon receipt of a petition for reconsideration, the Regional Director reconsiders the amendment and either rescinds or modifies the amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by directing the Regional Director to rescind the notice of amendment or to issue the amendment as proposed or in modified form.

(f) If the Administrator or the Regional Director finds that there is an emergency requiring immediate action

that makes the procedure in paragraph (b) of this section impracticable or contrary to the public interest, an amendment may be issued effective without stay on the date the airport operator receives notice of it. In such a case, the Administrator or the Regional Director incorporates in the notice of the amendment the finding, including a brief statement of the reasons for the emergency and the need for emergency action.

#### § 107.13 Security of air operations area.

(a) Except as provided in paragraph (b) of this section, each airport operator shall use the procedures included, and the facilities and equipment described, in its approved security program, to perform the following control functions:

(1) Controlling access to each air operations area, including methods for preventing the entry of unauthorized persons and ground vehicles.

(2) Controlling movement of persons and ground vehicles within each air operations area, including, when appropriate, requirements for the display of identification.

(3) Promptly detecting and taking action to control each penetration, or attempted penetration, of an air operations area by a person whose entry is not authorized in accordance with the security program.

(b) An airport operator need not comply with paragraph (a) of this section with respect to an air carrier's exclusive area, if the airport operator's security program contains—

(1) Procedures, and a description of the facilities and equipment, used by the air carrier to perform the control functions described in paragraph (a) of this section; and

(2) Procedures by which the air carrier will notify the airport operator when its procedures, facilities, and equipment are not adequate to perform the control functions described in paragraph (a) of this section.

#### § 107.15 Law enforcement support.

Each airport operator shall provide law enforcement officers in the number and in a manner adequate to support—

(a) Its security program;

(b) Each passenger screening system required by Part 121 of this chapter; and

(c) Each passenger screening system required by Part 129 of this chapter after June 29, 1979 or, after the date specified by the foreign air carrier involved, whichever date is earlier.

#### § 107.17 Law enforcement officers.

(a) No airport operator may use any person as a required law enforcement officer unless, while on duty on the airport, the officer—



(1) Has the arrest authority described in paragraph (b) of this section;

(2) Is readily identifiable by uniform and displays or carries a badge or other indicia of authority;

(3) Is armed with a firearm and authorized to use it; and

(4) Has completed a training program that meets the requirements in paragraph (c) of this section.

(b) The law enforcement officer must, while on duty on the airport, have the authority to arrest, with or without a warrant, for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located:

(1) A crime committed in the officer's presence.

(2) A felony, when the officer has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must provide training in the subjects specified in paragraph (d) of this section and either—

(1) Meet the training standards, if any, prescribed by either the State or the local jurisdiction in which the airport is located, for law enforcement officers performing comparable functions; or

(2) If the State and local jurisdictions in which the airport is located do not prescribe training standards for officers performing comparable functions, be acceptable to the Administrator.

(d) The training program required by paragraph (a)(4) of this section must include training in—

(1) The use of firearms;

(2) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(3) The responsibilities of a law enforcement officer under the airport operator's approved security program; and

(4) Any other subject the Administrator determines is necessary.

#### § 107.19 Use of Federal law enforcement officers.

(a) Whenever State, local, and private law enforcement officers who meet the requirements of § 107.17 are

not available in sufficient numbers to meet the requirements of § 107.15, the airport operator may request that the Administrator authorize it to use Federal law enforcement officers.

(b) Each request for the use of Federal law enforcement officers must be accompanied by the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence and aircraft piracy at the airport and to the air carrier aircraft operations at the airport.

(3) A copy of that portion of the airport operator's security program which describes the law enforcement support necessary to comply with § 107.15.

(4) The availability of State, local, and private law enforcement officers who meet the requirements of § 107.17, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal law enforcement officers needed to supplement available State, local, and private law enforcement officers and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal law enforcement officers.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of law enforcement officers employed by the FAA or by any other Federal agency, with the consent of the head of that agency.

#### § 107.21 Carriage of firearms, explosives, or incendiary devices.

(a) Except as provided in paragraph (b) of this section, no person may have a firearm, an explosive, or an incendiary device on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area; and

(2) When entering or in a sterile area.

(b) The provisions of this section with respect to firearms do not apply to the following:

(1) Law enforcement officers required to carry a firearm by this part while on duty on the airport.

(2) Persons authorized to carry a firearm in accordance with § 121.585 or § 129.27.

(3) Persons authorized to carry a firearm in a sterile area under an approved security program or a security program used in accordance with § 129.25.

#### § 107.23 Records.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part;

(2) The record is maintained for a minimum of 90 days; and

(3) It is made available to the administrator upon request.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of firearms, explosives, and incendiary devices discovered during any passenger screening process, and the method of detection of each.

(2) The number of acts and attempted acts of air piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual bombings on the airport.

(4) The number of detentions and arrests, and the immediate disposition of each person detained or arrested.

Issued in Washington, D.C., on December 21, 1978.

NOTE: The reporting and/or record-keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

LANGHORNE BOND,  
Administrator.

[FR Doc. 78-36056 Filed 12-26-78; 8:45 am]

THURSDAY, DECEMBER 28, 1978

## PART VII



# FEDERAL TRADE COMMISSION

## PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

### Trade Regulation Rules



## Title 16—Commercial Practices

## CHAPTER I—FEDERAL TRADE COMMISSION

## SUBCHAPTER D—TRADE REGULATION RULES

## PART 438—PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

**SUMMARY:** The Federal Trade Commission issues a final rule which requires proprietary vocational and home study schools to provide pro rata refunds to students who withdraw from their courses; to provide information to prospective students concerning the schools' graduation and placement records; and which extends the cooling-off period on vocational school enrollment contracts to fourteen days. The purpose of this rule is to alleviate currently abusive practices against vocational and home study school students and prospective students.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Walter C. Gross III, Federal Trade Commission, PM-H-221, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580; (202) 523-3814.

**SUPPLEMENTARY INFORMATION:** 16 CFR Part 438—Vocational Schools Trade Regulation Rule Statement of Basis and Purpose.

## A. Introduction.

On August 15, 1974, the Commission published for comment and public hearings a proposed trade regulation rule for proprietary vocational and home study schools. (1) Hearings on the proposed trade regulation rule were scheduled for six cities and were actually held in three cities (Boston, New York and Washington, D.C.) prior to the postponement of all rule-making hearings by the enactment of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. (2) After the Commission amended its Rules of Practice to conform to the Magnuson-Moss Act, (3) the proposed rule was republished by the Commission on May 15, 1975, with an invitation to all interested parties to comment on the proposed rule. (4)

On September 29, 1975, the Presiding Officer published in the *FEDERAL REGISTER* a public notice listing the dates and locations of the public hearings to be conducted under the new procedures of the Magnuson-Moss Act. (5) Thereafter, public hearings were

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held in San Francisco, Los Angeles, and Chicago. (6) In the course of the public hearings, both those conducted before and after the adoption of the Magnuson-Moss Act, over 400 witnesses offered testimony over a span of 44 days. Among the witnesses were federal and state governmental officials, representatives of major trade associations representing the schools affected by the proposed rule, consumer groups, legal aid attorneys, economists, educational experts, school owners and operators, individual consumers and students, and sales representatives.

In the course of this rulemaking proceeding, the Commission has made a diligent effort to ensure that all affected interests in this proceeding, and all members of the public, have had an opportunity to offer comment on the rule. During the comment periods prior to the public hearings over 900 written comments were received from the public. (7) At the conclusion of the public hearings, another comment period was opened to permit persons to comment on the testimony received at those hearings. (8)

After the conclusion of the public hearings, reports were prepared by the Presiding Officer, (9) who made findings on the issues which had been designated by the Commission to focus the public hearings, (10) and the Commission staff. (11) Based on its analysis of the evidentiary record, the Commission's staff recommended that the Commission promulgate a revised trade regulation rule which would have required proprietary vocational schools to inform their prospective students of the schools' graduation and placement rates, to make pro rata refunds to students in the event of student cancellations, and to obtain "reaffirmations" of enrollment contracts. (12)

Under Section 1.13(h) of the Commission's rules of practice, the publication of the Staff Report initiated a post-record comment period which afforded the public the opportunity to comment on the staff's and Presiding Officer's reports. This comment period commenced on January 7, 1977, and concluded on May 31, 1977, after two time extensions had been granted by the Commission at the request of industry groups. During this period, nearly 200 written comments were received. (13) To facilitate comment during this final comment period, the Commission released to the public a computer index of the rulemaking record. (14) This computer index was prepared by the Commission's staff and was not reviewed by the Commission prior to being released to the public. The Commission sought to assist the public in researching the record by releasing this document.

At the close of this comment period, the Commission convened a special Commission meeting to permit interested persons to make direct presentations to the Commissioners themselves. (15) After carefully considering the rulemaking record, the Commission has voted to promulgate a trade regulation rule concerning proprietary vocational and home study schools.

## B. Summary of the Evidence.

## 1. Industry Profile.

An estimated 7,000 to 8,000 schools comprise the vocational school industry. (16) The schools are customarily divided into two major categories: residence and correspondence. Residence schools (17) offer training in the conventional classroom setting; home study or correspondence schools provide instructional materials and teaching services through the mails.

## (a) Residence schools.

The large majority of schools are residential. (18) The types of training they offer can be grouped in four generic categories: (19) trade and technical, (20) business office and secretarial, (21) flight (22) and cosmetology. (23) Residence schools generally operate on one of two time formats: a "fixed class" schedule, which groups students together in classes with specific matriculation and graduation dates; or an "open enrollment" scheme, which allows each student to enroll and complete the course at his or her own pace. (24) Certain types of residence schools, such as flight and cosmetology schools, divide their courses into two distinct segments: an academic portion conducted in classrooms, and a practical segment provided through clinical or hands-on experience. (25)

The length of courses varies widely among residence schools and is dependent upon the nature and complexity of the training involved. Courses offered by proprietary residence schools range in duration from six months to four years, with an average course length of nine months. (26)

The costs of private residence schools courses also vary considerably, depending on the length of the course and the type of training offered. While the average tuition cost for all such courses was \$1,400 in 1973-74, average tuition for various types of residence programs ranged from \$460 to \$2,590. (27)

## (b) Home Study Schools.

While home study schools offer courses in approximately 300 different subject areas, (28) the majority of their students train for a limited number of trade and technical occupations. (29) The instructional format of home study schools involves the sequential mailing of lessons to the student, who studies the material, completes a lesson examination, and re-

turns the examination to the school. The school then grades the lesson (and in some instances provides additional comments and instruction), and returns the graded lesson along with the next set of instructional materials to the student. (30)

Because of the individual time flexibility allowed home study students, the lengths of correspondence courses are not standardized. (31) A 1974 study found that home study courses took an average of 10 months to complete, (32) while a 1976 study estimated an average completion time of 14 months. (33)

Tuition costs for home study courses averaged \$570 in 1973. (34) Again, the variance among individual courses is substantial: one large home study school offered courses ranging in cost from \$295 to \$1,795 in 1975, (35) while another charged between \$1,375 and \$1,795 in that year. (36)

Some school's courses consist of a combination of home study and residence training. In that format, the student pursues the academic portion through correspondence, and then completes by attending a practical training segment at the school.

## (c) Size of Schools—Enrollments and Revenues.

The record shows that proprietary vocational schools constitute a substantial industry, in terms of both enrollments and revenues.

The industry as a whole enrolls over two million students a year. (37) Although schools vary greatly in size, (38) large schools predominate in the industry in terms of their market shares of total enrollments. (39) In both the residence and home study sectors, a relatively small percentage of schools account for a substantial proportion of all enrollments. (40) The ten largest home study schools, for example, enroll approximately 75% of the one million students attending accredited correspondence schools. (41) Another factor contributing to the tendency toward market dominance by a small number of schools is the fact that several major corporations own and operate large chains of schools. (42)

Industry revenues are also sizable. Students paid \$1.7 billion for their courses in 1972, \$2.5 billion in 1973, and it is projected that annual revenues will exceed \$5 billion by 1985. (43)

## (d) Accreditation, Approval and Licensure of Schools.

Accredited schools are a minority of all proprietary schools; approximately 22% of the schools were accredited according to 1974 statistics. (44) However, accredited schools account for the vast majority of all students enrolled, as unaccredited schools tend to be smaller institutions. The four major

trade associations representing proprietary vocational schools have also established related accrediting units. The associations are the:

- (1) Association of Independent Colleges and Schools (AICS)—business office and secretarial programs;
- (2) National Association of Trade and Technical Schools (NATTS)—trade and technical schools;
- (3) National Home Study Council (NHSC)—all types of correspondence courses; and
- (4) Cosmetology Accrediting Commission (CAC)—cosmetology schools. (45)

More than two-thirds of all proprietary vocational schools are approved for participation in the veterans' benefits program. (46) Such approval enables schools to enroll veterans under the Congressionally authorized programs that subsidize veterans while they attend school. (47) Although overall administration of the program is the responsibility of the Veterans Administration, the determination of schools' eligibility for the program is delegated to the individual states. (48)

Most of the states require that proprietary vocational schools be licensed. The prerequisites to licensure vary widely from state to state, with different norms established for facilities, instructional personnel, equipment, enrollment practices, student qualifications, disclosures, refund policies, and reissuing of licenses. (49)

A discussion of the evidence concerning the efficacy of the various forms of accreditation, approval and licensure appears at section B(8)(c), below.

## 2. Student Profile

The proprietary vocational school student population is characterized by a wide spectrum of demographic attributes such as age, race, income, socioeconomic background education, and job experience. The evidence in the public record, however, demonstrates a high degree of similarity among many students who take vocational school courses.

## (a) Demographic Characteristics

The large majority of residence school students are young; the average enrollee in such schools is 20 years old. (50) Correspondence school students are typically somewhat older, although the majority of non-veteran home study students are enrolled by their early to mid-twenties. (51) Veteran enrollees, who comprise about 40% of home study students, (52) have an average age of 30. (53)

The typical vocational student is a high school graduate who majored in a vocational or general program, rather than a college-preparatory curriculum. (54) Many students of both residence and home study schools have previously attempted some form of postsecondary education, but only a

small percentage have completed those programs. (55)

Proprietary vocational students frequently come from families of limited educational attainment; according to one nationwide study, 32% of vocational school students' parents were high school drop-outs, and fewer than 10% had college degrees. (56)

Most residence school students have little or no full-time work experience before enrolling. (57) Those who have worked were generally employed in low-income positions. (58) Most correspondence school students who are non-veterans are employed but are also earning relatively low salaries. (59) Veterans have both higher employment rates and higher incomes than their non-veteran counterparts in the home study population. (60)

## (b) Motivations, Financial Aid Usage, and Information Sources of Enrollees

Virtually all private residence school students enroll in order to obtain new or better jobs. (61) While a higher percentage of home study students enroll for a vocational reason than do residence students, the available evidence indicates that most correspondence students also are motivated primarily by occupational goals. (62)

The majority of proprietary vocational school students receive some form of government financial assistance. (63) About two-thirds of trade and technical school enrollees receive aid, almost all through the Federal Guaranteed Student Loan or veterans' benefits programs. (64) Slightly more than half of the students in other programs—such as business, cosmetology, flight and medical assistant training—receive government aid through these programs, but in addition, a substantial number receive assistance from other federal and state programs. (65) Students in accredited correspondence schools also rely heavily on government financial assistance; over a third use veterans' benefits and one-fourth receive Guaranteed Student Loans. (66)

The record evidence shows that most students make their enrollment decisions without adequate information or employment counseling. (67) Studies have shown that most students make their enrollment decisions independently of any external sources of information and counseling, and the remainder rely more heavily on the school's advertising and sales presentations than on any other source. (68) Only a small minority of students seek information or advice from professional career counselors and former teachers. (69)

Legal aid attorneys, consumer organizations, and consumers themselves testified at the hearings in this proceeding that prospective students



suffer from a paucity of information concerning job potential, salaries, drop-out rates and other facts relevant to their enrollment decisions. (70) Government reports and conferences have pointed to the same problem. (71)

#### (c) Vulnerability of Enrollees

The pattern that emerges from the record is that the typical vocational school student is unusually vulnerable to deceptive and misleading advertising and to unfair sales and enrollment practices. Because the typical student is young, has limited educational and work experience, and is either unemployed or earning a low salary, he or she is likely to be more susceptible than the general adult population to unfair sales practices. Moreover, prospective students are motivated to enroll primarily by a desire to obtain prestigious, well-paid jobs in order to escape the low wage/mediocre job syndrome. The vulnerability of such students is compounded by their lack of information concerning vocational education and career opportunities. (72)

#### 3. Representations and Claims Made by Proprietary Vocational Schools

The record shows that, in their efforts to attract students, many vocational schools make a variety of false and misleading claims in their advertising and sales presentations. The claims create false impressions about two general categories of information: jobs and earnings; and non-career related information about a school.

##### (a) Job and Earnings Claims

Claims about the job and earnings prospects the vocational student may expect upon graduation are the most important and prevalent forms of advertising used to solicit enrollees. Job and earnings representations may be either specific claims about the success of a particular school's graduates or general claims concerning the job market and earnings potential in a career field.

##### (1) Specific Claims

Specific job and earnings claims include guarantees of jobs upon graduation; advertisements indicating the offering of jobs rather than training; representations about the adequacy of a course for the purpose of obtaining employment; and claims about the placement and earnings success of a school's own graduates. These claims are frequently false, misleading, or deceptive and their use is well-documented in the record. (73)

Explicit guarantees of jobs upon graduation are almost always deceptive, since differences among students' capabilities and fluctuations in job market demand make it virtually impossible for any school to be sure of placing every enrollee in a suitable job. (74)

Similarly, vocational school advertising which purports to offer jobs rather than training is deceptive on its face. Such "help wanted" advertisements, which usually appear in newspapers' classified sections, fail to reveal that the advertiser is a school offering training rather than an employer seeking job applicants. (75)

Another variant of the job offer claim is the representation by a school that it is hiring for civil service positions. Numerous schools have induced students to enroll under the false pretense that they were participating in government-sponsored training or hiring programs. (76) Similarly, some schools claim affiliation with well-known businesses and then falsely imply that the company will hire the student upon graduation. (77)

Some schools also misrepresent the adequacy of their training for obtaining employment in a particular field. Such misrepresentations usually involve the failure to disclose additional prerequisites to employment, such as higher-level education, work experience, and physical requirements imposed by governmental entities. (78)

Finally, deceptive claims regarding the success of a school's own graduates play an important role in inducing unfair enrollments of prospective students. Such misrepresentations include false or exaggerated promises of placement assistance; (79) the testimonials of a few satisfied students from a class of predominately unsuccessful graduates; (80) and claims which falsely claim (81) high placement percentages or success. (82)

While these claims may be literally truthful when applied to some portion of a school's graduates, they can seriously mislead prospective students. (83) Consumers understandably assume that schools which advertise a successful history of placement will be able to place them as well—although their "success" may be based on the experience of a small number of students. (84) Similar claims concerning possible earnings also convey the impression that the amount stated will be available to a typical graduate. (85)

For these reasons, the Commission has found that these claims are frequently deceptive, or have the capacity to deceive the average consumer. (86)

##### (2) General Claims

Unlike specific claims which rely on a school's own purported performance, a general claim is one which suggests employment success by drawing on external proxies such as projections of job market demand. General claims appear in several formats, the most common of which are: references to high employment or salary levels in particular fields; citations to projected employment and salary levels in the

future; and predictions of rapid growth or demand for new skills in an occupation. (87) General claims are frequently derived from labor supply and demand studies and projections prepared by government and private agencies. (88) The U.S. Department of Labor's *Occupational Outlook Handbook* appears to be the most frequent source of data used in such claims. (89)

As with specific claims, general employment and earnings claims have been widely used in the industry (90) and are perceived by many consumers as references to the job and earnings potential of the school's own graduates. (91)

The record shows that a general statement of job opportunity—e.g., "computer programmers are in big demand"—directed to vocational school consumers is potentially deceptive for a number of reasons. First, such claims create the impression that jobs will be made available to students who attend the school. In fact, the record shows that jobs are not uniformly or typically available to students who enroll in proprietary schools. (92)

Second, claims of general employment demand or potential salary expectations fail to disclose that these generalized employment data are the product of a complex statistical process and must be qualified to be correctly understood. The process encompasses a broad set of variables underlying the final data. The most significant of these include the degree of statistical error tolerated by the organization making the projections; the age of the data utilized; possible fluctuations in market forces; inflation; and local variations in the labor market. (93)

Every organization that produces this form of supply/demand data provides introductory material which explains its statistical and methodological assumptions and warns the reader that these assumptions are important for a correct interpretation of the information. (94) These caveats do not appear in proprietary school advertising.

Third, official publications that attempt to predict occupational trends usually include a discussion of the prerequisites to employment in a given field. (95) Such prerequisites include requirements for higher educational degrees, minimum work experience, union membership, licensing and certification requirements, and employer preferences for operating their own in-house training programs. (96) Thus, for example, a generalized claim that "computer programmers are in big demand" which fails to disclose that, in certain areas, a minimum of two years' work experience is required and that college degrees are preferred, would be deceptive. (97) The majority

of proprietary school advertisements in the record fail to disclose such employment prerequisites and conditions. (98)

##### (b) Non-Career Related Claims

Claims other than those concerning jobs and earnings also are widely used to attract enrollees and are frequently exaggerated, deceptive or false. (99) The deceptive use of such claims can take either of two forms: (1) the explicit misrepresentation of a school's attributes or policies; or (2) the omission of material information or qualifications concerning a school's claims.

##### (1) Explicit Misrepresentations

Among the most prevalent of such misrepresentations are exaggerated or false statements concerning a school's equipment and facilities; (100) the quality of instruction provided; (101) the availability of part-time employment opportunities during the course; (102) refund policy provisions; (103) and accreditation and government approval of courses. (104)

Two additional types of misrepresentations have a particularly serious impact on the prospective enrollee's ability to make a rational purchase decision. First, schools often dissuade students from reflecting on their decision to enroll by falsely claiming that rigid enrollment deadlines exist. Thus, many students forego the opportunity to verify the school's claims and seek outside counseling before signing a contract because they are deceived by the claim that they will lose their only chance to enroll if they postpone the decision. (105)

Second, schools have misrepresented the selectivity of their admissions process through false claims about the use of an admissions screening committee, the need to pass an aptitude or qualifications test, or the number of places available (and their restriction to highly qualified applicants.) In fact, the record demonstrates that few proprietary vocational schools apply any minimum admissions criteria aside from the student's age and that many schools randomly recruit and admit all enrollees who are willing to sign (106) a contract. (107)

False selectivity claims interfere with the consumer's ability to make a rational purchase decision in two ways. First, they can be used to negate applicable cooling-off periods under state and federal law (108) by causing the student to believe that his or her enrollment is not effective until he or she has been "accepted" by the school. By the time the student has been "accepted," the cooling-off period has lapsed. (109) Second, such claims are used to distort the customary roles of seller and buyer, so that the consumer must sell himself or herself to the school as being sufficiently qualified

to meet the "selective" admissions criteria of the institution. (110)

##### (2) Omissions of Material Information

The record shows that many students are misled not only direct misrepresentations such as those described above, but also by the failure of the schools to disclose material facts. The most important of such deceptions-by-omission is the non-disclosure of drop-out rates. Virtually no schools currently disclose their drop-out rates to prospective students. (111) Moreover, the record shows that most proprietary vocational school students do not complete their courses. (112)

The significance of schools' drop-out rates is discussed in detail at Section B(5) below. Drop-out rates are directly relevant to schools' claims concerning placement performance and other purported success indicators. For example, a school which claims to have a 90% placement rate, but which fails to disclose that only 20% of its students graduate, seriously misleads enrollees concerning their chances of obtaining jobs.

#### 4. Commissioned Sales Representatives and Sales Techniques

Commissioned sales personnel are widely used within the proprietary vocational school industry, and this marketing technique has been a major source of the unfair or deceptive acts and practices which led to the promulgation of the trade regulation rule. The abuses stem both from the nature of the sales force itself and from the methods the sales representatives employ in obtaining enrollments. This discussion focuses on the sales representatives and practices of the larger schools, which enroll the majority of all students. (113)

##### (a) Characteristics of the Sales Force

The record demonstrates that the widespread use of unfair solicitation and enrollment practices in this industry is closely related to the manner in which its salespeople are recruited, trained, compensated, and controlled.

##### (1) Recruitment and Turnover

The primary qualification sought by schools in recruiting salespeople is the individual's ability to sell. (114) Qualities such as personal character and experience in education or counseling are seldom part of the typical school's selection criteria. (115)

One reason for the random and continual recruitment engaged in by the larger schools is the exceedingly high turnover rate among salespeople at those schools. (116) Estimated to be as high as 70-90% annually at some schools, (117) the rapid turnover explains in part the remarkable uniformity of sales techniques used in the industry since sales representatives migrate from school to school. (118) The school's constant need for new recruits

to replace the outgoing employees also contributes to the typical salesperson's lack of familiarity with the content of the educational package he or she is selling. (119)

The training of salespeople is oriented almost exclusively to selling techniques rather than to the substance of the courses offered, the school's actual graduation and placement record, or the nature of the occupations, for which training is sold. (120) As a result, the consumer's decision to enroll in a particular course and to enter a career field is often based solely on communications with an ill-informed sales agent whose only real expertise is in selling. (121)

##### (2) Compensation and Supervision

The compensation structure for commissioned sales forces also contributes significantly to sales abuses in this industry. The various compensation systems—payment by commission, bonuses, and sales contests—all have the effect of encouraging the enrollment of every prospect who can be induced to sign a contract. (122)

Although some schools' compensation systems provide for higher commissions the longer a student remains in school, the critical factor is that the agent benefits financially even if a student attends only one class or submits one correspondence lesson. On the other hand, if the salesperson fails to persuade the prospect to enroll, he or she is paid nothing for his or her efforts. (123)

In addition to monetary incentives, many schools enforce minimum sales quotas to boost enrollments. Under threat of losing both a job and accrued commissions from past sales, the agent is all the more likely to obtain enrollments indiscriminately. (124)

The net effect of such policies is to encourage salespersonnel to employ any means necessary to induce enrollments and to overcome consumers' natural hesitancy about making such expensive and long-term commitments. Misrepresentations, deceptions, and plainly fraudulent claims arise from the overriding drive to make sales which the schools' compensation structures necessitate. (125)

The commissioned sales system also encourages the enrollment of unqualified and unmotivated students—a factor that contributes to the high drop-out rate experienced by the industry. (126) Because salesmen are rewarded for merely obtaining downpayments and contract signatures, they have no incentive to screen out unqualified prospects and minimize potential drop-outs. (127)

Moreover, the record shows that schools have done little to prevent the abuses that arise from this compensation system. Indeed, the financial incentives of the supervisors responsible



for overseeing the actions of the sales forces actually encourage them to ignore unfair sales practices by their subordinates. Supervisors typically receive a fixed percentage of the tuition contracts sold by the sales agents in their employ. The manager's incentives are thus identical to those of the salesperson, since both benefit from every enrollment obtained, regardless of the methods used to obtain it. (128)

### (3) Selling Techniques

The typical sale begins with the development of "leads," or the names of potential enrollees, by the school or the salesperson. Advertisements and direct mail literature which asks the consumer to call the school for further information are the most common sources of leads. (129)

The salesperson then arranges to meet with the prospective student, usually in the consumer's home. (130) At this initial stage of the interview, the record indicates that the salesperson may misrepresent himself or herself as a government representative, (131) an educational or guidance counselor, (132) or an admissions official who enforces rigid entrance standards for the school. (133)

One of the most common sales strategies used by large proprietary vocational schools is a technique known in the industry as the "negative sell." (134) The essence of this highly developed and successful sales tactic (135) is to reverse the roles of seller and buyer so that the consumer must prove his or her worth to the salesperson instead of the latter persuading the potential student of the school's merits.

The negative sell reinforces and capitalizes on the misrepresentation that the school's admissions program is highly selective and limited. (136) Bogus admissions and qualifications tests are frequently used by the salesperson not to eliminate unqualified applicants but to identify and exploit the consumer's insecurities as part of the sales presentation. (137)

A former salesman summarized the method as follows:

(W)e tried to find something negative about the prospect to put him on the defensive. Inevitably the prospect would then insist that the negative was not true and he would try to prove why he was worthy of being selected for the course. (138)

Another former sales agent described the desired result of negative sell:

At the end of a good sales pitch the prospect feels lucky to be getting into the school . . . that he had done well in the interview and for that reason alone, he was being recommended for admittance . . . In reality, of course, everyone was admitted. (139)

After the sale is consummated, various "post-sell" techniques are used to

defeat the impact of cooling-off periods imposed by the FTC and numerous state laws. (140) The essence of the post-sell is to leave the consumer in suspense as to whether he or she has been "accepted" by the school until after the cooling-off period has expired. Some schools also train their sales agents to discourage consumers from discussing their enrollments with family, friends, or counselors until they learn whether the school has admitted them. (141) The post-sell thus effectively lulls the student into inactivity until it is too late to cancel the contract. (142)

The Commission has found, based on the record evidence, that the unfair and deceptive sales practices described above are pervasive and occur with considerable frequency, particularly among the major, nationwide schools which enroll a large proportion of all proprietary school students. (143)

### (b) Federal Monies As A Sales Tool

The availability of Guaranteed Student Loans (GSLP) and veterans' benefits has had the unintended effect of facilitating many of the sales abuses described above. (144) The ready availability of such funds has been a boon to vocational school salespeople, since it reduces the consumer's resistance to expending his or her own funds for the training. Reluctant, unmotivated, and unqualified students who would otherwise be unlikely sales prospects are occasionally induced to enroll by the promise of long-term loans or outright grants from the federal government. (145) The deceptive implication that the agencies which provide the funds have endorsed the schools' programs has also on occasion been used to reassure doubtful enrollees; (146) indeed, the availability of federal subsidies has often been used as a prime selling point. (147)

The result of this infusion of federal monies has been to accelerate the indiscriminate enrollment of consumers who are unlikely to complete their course and find employment. The industry-wide phenomenon of high drop-out rates and low placement percentages is in part a reflection of these enrollment policies made possible by the availability of loan and grant monies. (148)

### 5. Industry Drop Out Rates

#### (a) Timing of Withdrawal

The record shows that a large majority of proprietary vocational school students do not complete their programs of study. The drop-out rate for the industry as a whole—including both home study and residence schools, whether accredited or non-accredited—is over 70%, according to several studies. (149)

Moreover, most studies understate the actual attrition rates because they fail to take account of enrollees who

never attend a class or submit a correspondence lesson—the "non-starts." Under existing industry cancellation and refund policies, non-starts are financially obligated for some portions of their contracts, even though they do not begin their courses. (150) Their numbers are substantial: in one year, nearly 100,000 enrollees in accredited correspondence schools failed to begin their course. (151)

Most students drop out in the early stages of their courses. (152) One GAO study found that over 70% of all correspondent school enrollees dropped out of their courses. Of those who dropped out, over 30% withdrew during the first tenth of the course, over 67% within the first third, and 94% by the two-thirds mark. (153) The attrition rates of residence schools reflect similar early drop-out patterns. (154)

Students drop out for a variety of reasons, many of which are unrelated to the quality or sale practices of the schools. (155) However, the record contains substantial evidence that a major cause of non-completion is the industry's enrollment policies, coupled with the unfair and deceptive sales practices described above. (156)

### (b) Availability and Utility of Drop-Out Statistics

Although most schools maintain complete data on the number of students who fail to complete their courses, (157) such data is rarely made available to prospective students. (158)

The Commission is in agreement with the numerous federal and state agencies, educators, counselors, and other experts who believe that drop-out statistics are relevant and material to prospective students' enrollment decisions. (159) Consumers need such information particularly in light of the fact that schools' pre-enrollment practices have been shown to be related to their ability to retain students. (160) Information concerning a school's graduation rate will not necessarily enable a student to conclusively ascertain his or her chances of completing a course, although it will serve to alert students to the need to inquire further into the issue. However, this information will enable students to make a better comparison of competing programs offered by various institutions within the proprietary vocational school sector. (161)

### 6. Refund Policies

#### (a) Existing Standards

The cancellation and refund policies by which schools calculate the drop-out's financial obligation currently vary widely and derive from a number of sources.

Although 44 states had mandated some form of refund policy standards as of January, 1975, most of the state-mandated refunds are patterned after

those adopted by the vocational school industry accrediting associations. (162) The accrediting associations have established minimum refund standards for their member schools. The policies established by the four major accrediting organizations (163) are similar in their approach and generally observe the following format: the student is obligated only for an enrollment fee (usually a percentage of the contract not to exceed \$100) if he or she withdraws prior to the commencement of the course; the obligation is for 25% of the contract price if the student withdraws during the first quarter; 50% during the second quarter; and for the total contract price after half of the course has been completed. (164)

Two federal agencies—the Veteran's Administration and the U.S. Office of Education (USOE)—also require adherence to minimum refund standards for participation in their respective financial aid programs. Congress established the veteran's program standards, which adopt the industry association's policy for veterans enrolled in correspondence courses, and pro rata refunds for unaccredited residence school students (no refund standards have been enunciated for veterans attending accredited residence schools). (165)

USOE's regulations for accredited schools participating in its Guaranteed Student Loan Program (GSLP) do not mandate specific refund provisions, but require that they be "fair and equitable." (166)

### (b) Cancelling the Enrollment Agreement

The enrollment cancellation procedures specified in school refund policies significantly affect the actual amount returned to the student. The requirements of the state and federal agencies and the accrediting associations vary considerably, although most provide for written disclosure to the student of the school's cancellation policy and procedures, and require that the student provide written notice of his or her intention to withdraw. (167)

The various agencies' requirements for determining the effective date of cancellation are largely unstandardized. (168) A few states and two of the accrediting associations prescribe maximum time periods within which schools must provide refunds (usually 30 days); USOE requires refunds to be made within 40 days of the student's withdrawal. (169)

In addition to the unstandardized and often inadequate protection afforded students under the various agencies' refunds and cancellation standards, the record shows that enforcement of those standards is frequently ineffective. (170) A 1975 USOE study, for example, revealed ex-

tensive violations of industry accreditation standards, which appear to be the results of inadequate policing by the responsible agencies. (171)

(c) *Costs of Existing Refund Policies.* The various cancellation and refund policies described above have resulted in large financial losses and attendant harsh consequences for students. (172)

Present refund structures do not adequately suffice to discourage abusive sales practices in this industry, since it is still profitable for schools to indiscriminately enroll large numbers of potential drop-outs—often through the use of deceptions and misrepresentations—rather than select only qualified enrollees and then provide the training their sales presentations promise. (173)

### 7. Student Placement Success

The success of proprietary vocational school students in obtaining jobs was a central issue in this proceeding, because a primary reason for the industry's existence is to prepare students for obtaining employment in a field related to their training. The importance of job placement performance is magnified by the schools' sales representations regarding jobs and earnings, which were discussed in section B(3) above.

The record evidence concerning placement supports the conclusions outlined below.

1. In the market as it currently operates, the prospective student usually has no way of knowing whether the course he or she is considering will enable him or her to get a job. Few schools currently disclose accurate data reflecting their former students' success in obtaining jobs. (174) The information on which prospective enrollees rely in assessing their prospects for obtaining employment is often inaccurate and frequently consists of misleading or ambiguous claims made by the schools as part of their sales efforts. (175)

2. Schools, despite their advertised claims, often do not know whether their training will enable enrollees to obtain jobs. (176) Although recent VA regulations now require many schools to maintain placement data, the record shows that the industry as a whole has not in the past attempted to measure its performance in terms of placement statistics. (177) In fact, the record shows that many of those schools which have relied most heavily on job and earnings claims in their sales presentations have had little actual knowledge of their students' employment experiences after graduation. (178)

3. Many graduates do not get jobs related to their training; of those who do find employment, a significant number do not obtain the positions they had expected. (179)

An extensive study conducted in 1974 found that fewer than 20% of proprietary school graduates who took professional or technical level training obtained jobs in those fields. (180) The remainder either took lower-paying, unrelated jobs or were unemployed. On the other hand, according to the study, 60% of those who graduated from less technical, clerical, or service workers programs obtained jobs related to their training.

Other studies in the record confirm that a majority of all proprietary vocational school graduates fail to obtain jobs related to their training. (181) When considered in light of the fact that most enrollees never graduate, (182) the conclusion which emerges from the record is that only a fraction of prospective students can expect to achieve the employment objective on which they base their enrollment decisions. (183)

The record suggests that the reasons behind the low placement rates are varied, the primary factors appear to be the following: (1) low job market demand for vocational school graduates, particularly in highly technical, skilled, or unionized fields; (184) (2) inadequacy of schools' training as preparation for certain occupations; (185) (3) insufficient school placement services; (186) and (4) the enrollment of unqualified students who are unemployable in the fields for which they were trained by virtue of age, physical limitations, or other personal factors. (187)

4. Although the overall placement performance in the industry is low, the employment rates of individual schools vary considerably, with certain schools and occupational programs enjoying highly successful records. (188) However, the lack of comparative placement statistics and the existence of misleading job and earnings claims prevents prospective students from identifying those schools and programs which are most likely to lead to employment. (189) While a properly functioning market would be expected to provide such information, with which consumers could make rational purchase decisions, the record demonstrates that the proprietary school market has failed in this respect. (190)

### 8. Inadequacy of Existing Regulation

Numerous regulatory entities at the state, federal, and private levels have direct or indirect responsibility for supervising the proprietary vocational school industry. (191) However, the Commission has determined—based on its review of the record evidence concerning the responsibilities, jurisdiction, and effectiveness of each of these entities—that the existing regulatory framework is inadequate to curtail the abuses outlined in this Statement.



## (a) State Regulation.

The primary source of supervision and review of proprietary schools occurs at the state level. (192) Most states require individual schools to be licensed and prescribe certain standards as prerequisites to licensure. (193) While the statutory criteria vary considerably from state to state, their primary objective is to insure that schools meet minimum standards for course content, facilities, libraries, instructors' credentials, records maintenance, ownership and management control. (194)

Although some State statutes and regulations contain separate standards for business practices such as advertising, enrollment techniques, sales, refunds, and disclosures, (195) they nonetheless are concerned primarily with the States' more traditional interest—the quality of the education being offered. (196)

The record also documents a prevailing lack of sufficient enforcement of those consumer protection standards which do exist at the State level. (197) School licensing officials and consumer protection personnel representing numerous States testified that they have neither the manpower nor the budget resources to cope effectively with the abuses engaged in by schools within their jurisdictions. (198) Other evidence, (199) including the continued prevalence of unfair business practices engaged in by schools throughout the country, (200) points to the conclusion that State regulation of this industry is inadequate.

Finally, even improved State enforcement capabilities could not cure the significant portion of industry abuses which are interstate in character. The operations of large multi-State schools are beyond the capacity of the individual States to control. (201)

## (B) Federal Regulation.

The Federal Government's involvement in proprietary school education derives from the many Federal subsidy and grant programs operated by various departments and agencies. (202) Precluded by statute from engaging in direct evaluation of or control over the individual schools, (203) Federal agencies generally have been confined to supervising the fiscal and procedural aspects of their programs. (204) They have deferred to other non-Federal (or non-governmental) entities to exercise direct control over the schools' educational quality and sales practices. (205) For the approval of schools eligible for the veterans' benefits program, the VA is required to defer to State agencies, (206) while USOE relies primarily on private accrediting agencies. (207)

The Federal agencies have acknowledged the regulatory weaknesses inherent in this system of indirect

review, which has frustrated their efforts to curb abuses which are directly related to the infusion of Federal money into the proprietary school industry. (208) As was noted above, (209) the availability of VA subsidies and USOE guarantees of student loans made by financial institutions and by the schools themselves has been widely used by school sales forces to induce the enrollment of millions of students. (210)

In addition to their use as sales tools in deceptive and unfair marketing practices, the Federal programs have contributed indirectly to diminished industry performance by distorting normal market forces. That is, the schools' incentive to compete effectively by providing the education and employment opportunities their sales efforts promise has been significantly reduced by guaranteed Federal subsidies, which all too often have had the effect of rewarding schools indiscriminately, regardless of their performance. (211)

Congress and both of the agencies have recently acted to curtail such problems by instituting certain Federal standards for school participation in the programs. (212) The primary determination as to school eligibility still rests with the State agencies and accrediting associations, however, so that these initiatives may suffer from similar infirmities. (213) Indeed, a VA representative testified to the Commission that more restrictive requirements for maintaining VA eligibility have caused many schools to withdraw from the program, thus removing themselves from VA oversight. (213a)

The Commission believes that the Trade Regulation Rule, with its provisions for direct consumer relief supported by the Commission's enforcement capacity, will provide remedies which are beyond the scope of those embodied in the VA and USOE programs. The recently implemented regulations of those agencies, augmented by the Rule's requirements, are expected to provide the full scope of relief needed to curtail existing abuses on an industry-wide basis.

## (c) Accreditation.

The four major accrediting organizations described in this Statement operate through a voluntary peer-review process. The essence of the accreditation process is an initial self-evaluation by each school, and subsequent peer group efforts to assist the accredited schools in achieving prescribed standards over a period of several years. (214)

By their own admission, the accrediting organizations are neither designed nor equipped for regulatory or enforcement functions in consumer protection matters. (215) Because their primary function is to achieve

long-range improvement in educational performance among accredited schools, they cannot effectively police the industry's business practices or enforce compliance with consumer protection standards. (216) While improved educational quality is an important objective, so too is the goal of insuring that students are not misled into expecting benefits that cannot or will not be delivered. That is particularly true where the services offered relate to such a critical economic function as job training.

## C. Legal Basis for the Rule.

## 1. Prevalence of Unfair or Deceptive Acts or Practices.

In section B of this statement, the Commission delineated many of the unfair and deceptive advertising, sales and enrollment practices upon which the need for this rule is predicated. Many of the practices which violate Section 5 of the FTC Act are almost uniformly used. For example, the use of generalized jobs and earnings claims without the necessary qualifications on those data and the failure to disclose material information concerning placement and graduation rates is comparatively uniform, particularly among the larger institutions which enroll the majority of students. Similarly, the majority of vocational school students are enrolled after contact with a commissioned sales person in which deceptive representations are frequently used or the indiscriminate enrollment policies attending the use of the "negative sell" sales policy are present.

Other practices found to be deceptive or unfair, including many specific misrepresentations such as help-wanted advertising, sales personnel referring to themselves as guidance or enrollment counselors, misstatements of graduation or placement rates, etc., are also frequently used, as indicated.

Considerable attention was directed by industry groups to the issue of the volume of consumer complaints concerning vocational education which would support the promulgation of a trade regulation rule. Numerous schools and their trade associations argued that the number of valid consumer complaints concerning the practices of proprietary vocational schools was *de minimis* when compared with the total enrollments of the schools. (217) In both the Staff Report as well as the final comments of the industry members, there were lengthy discussions addressing the extent to which reported consumer complaints represented either the "tip of the iceberg", or, rather, the entire iceberg of consumer dissatisfaction. (218)

While consumer complaints are one measure of the existence of a problem in an industry, they are not the sole measure of the prevalence of practices

which violate Section 5 of the FTC Act. The measure of consumer dissatisfaction as actually expressed through consumer complaints is but one aspect of the determination of whether practices violative of Section 5 are "prevalent." Equally relevant are the opinions of experts in the field; documentary evidence such as enrollment contracts, advertisements, and promotional materials; the testimony of present and former school owners and sales personnel; studies and investigations performed by state and federal governmental agencies; newspaper investigations and exposes; and the Commission's own prior experiences in regulating the advertising, sales and enrollment practices of proprietary vocational schools through individual cease and desist orders. In sum the issue of prevalence requires the Commission to examine all of the materials in the record. Moreover, the issue of prevalence involves an examination of both the number of schools engaging in practices violative of Section 5 and the number of students affected by the practices.

Given the multiplicity of students and schools involved in this industry and the millions of individual school-student contacts which occur, it is extraordinarily difficult, and probably impossible, to make any precise quantitative assessment of the frequency of the practices at issue. Despite the fact that the prevalence of the practices has been an issue in this proceeding since the outset neither the Commission's staff nor other interested parties have been able to precisely quantify the extent of abuse although occasional studies have attempted to test empirically the level of these practices. Nevertheless, prior Commission involvement with proprietary vocational schools clearly demonstrates the continuing nature of the problem in the industry. In 1972 the Commission published guides for proprietary vocational schools, voluntary in nature, specifically delineating practices which the Commission believed violated Section 5. (219) Yet, since 1972, the Commission has issued 22 complaints or consent decrees involving industry schools, (220) indicating that it had reason to believe violations of § 5 had been committed. While the Commission would prefer harder numbers on the question, the issue of prevalence does not lend itself to precise quantification. On the basis of the record here, the Commission is convinced that large, though not precisely ascertainable, numbers of students are affected by these practices, and that this number represents a significant number of all school-student interactions. The record information is sufficient to convince us that action to pro-

tect the vocational school consumer is justified.

## 2. Scope of Coverage of the Rule.

## (a) Courses Covered by the Rule.

The scope of the rule adopted by the Commission is determined mainly by the definition of "course" and specific exemptions under that term. If a program of instruction "purports to prepare or qualify individuals, or improve or upgrade the skills individuals need for employment in any specific occupation . . ." then it is a "course" which is covered by the rule.

Many courses, such as heavy equipment operation, secretarial skills or computer programming are, by their very nature, programs which purport to prepare individuals for employment. Other programs may or may not be "courses" depending upon how they are marketed. Thus, a program of study which is purported to be for the sole purpose of preparing a person to pass an exam for a professional license would not be covered by the rule. However, if express or implied claims about the availability of jobs or earnings are made in connection with marketing the program, or about training for the profession, then it is covered by the rule. As an example, schools which offer programs for preparing to take civil service exams would not be covered by the rule unless they represented the availability of government jobs or made any other express or implied references to salaries, security, or other benefits of government employment.

Similarly, while self-improvement courses are specifically excluded from the rule's coverage, some courses which would otherwise qualify as self-improvement programs would be covered if they were marketed in a manner which created the expectation of employment. For example, a charm school otherwise exempt from rule would be covered by it if advertising for the school led persons to believe that graduates could enter the modeling profession.

It is important to note here the distinction between representations which would place courses within the scope of the rule's coverage and those jobs or earnings claims which trigger the placement record disclosures required by Section 438.3 of the rule. The latter are limited to express claims of a general or specific nature about employment or earnings. No such limitation attaches to the former. Thus, the claim "Be a model" would not trigger the placement disclosure requirement of Section 438.3(b), (223) but a school making that claim would have to comply with the other requirements of the rule.

## (b) Exclusion of Not-for-Profit, Public and "Degree" Course.

The Commission has limited the coverage of this rule to include only proprietary institutions. Excluded from the rule are not-for-profit institutions and publicly supported community colleges and vocational institutions. (222) Members of the proprietary sector have contended that the failure of the rule to cover community colleges and other public institutions will place the proprietary institutions in an adverse competitive position. (223) They have contended that the mandatory release of graduation and placement information by proprietary vocational schools, without a similar obligation for public institutions, will deprive consumers of the ability to meaningfully compare the track records of the two different types of institutions. (224)

There is evidence in the record to show that some public vocational schools and community colleges have engaged in questionable advertising and enrollment practices. (225) However, whereas the use of generalized jobs and earnings claims by proprietary schools as well as the use of commissioned sales personnel by those same institutions has been the rule, the use of similar methods by public institutions has not been shown in the record to be pervasive.

Moreover, alternative means exist to control the practices of public institutions. Public institutions are run by public officials who are more directly accountable to the public. Furthermore, the existence of public funding reduces the economic incentive for public schools to engage in deceptive practices. In addition, other factors such as course cost and structure differentiate public from proprietary schools. (226) In view of these factors and the evidence of record concerning deceptive practices, the Commission does not believe that extension of this rule to cover public sector schools is warranted. (227)

One significant exemption from the coverage is included within the rule. Section 438.1(c) of the rule exempts from the rule's coverage programs two years in length or longer which consist of accredited college level instruction which culminates in a standard college level degree as defined in 38 U.S.C. Section 1652(g).

To be exempt from the requirements of the rule, a program of instruction must culminate in a standard college degree, in most cases an Associate Degree or better. The Commission believes that this exemption may raise one potential problem. The Commission intends for this exemption to apply only to students who are genuinely pursuing the degree objective. It may be that some institutions which offer both degree and non-degree programs may offer some courses which



can be taken by either degree or non-degree students. If the records of institutions offering both types of programs demonstrate that students are invariably being enrolled "in the degree program," and are subsequently dropping out of the degree program as soon as they conclude a course, the Commission may consider amending the rule to deal with this situation. The Commission will monitor this situation to determine whether a problem is developing.

### 3. Cooling-Off Rights.

In Section 438.2 of the rule, the Commission has adopted a cooling-off requirement on all vocational school enrollment contracts, whether entered into at the school, the home of the prospective student, or entirely through the mails. In 1974 the Commission adopted a cooling-off rule on door-to-door sales (228) which applied to vocational school enrollment contracts entered into away from the place of business of the seller. (229) However, in its present form, the Commission's cooling-off rule has proved ineffective to accomplish the goals for which it was intended in the vocational school market.

#### (a) Attempts to Negate the Intended Effect of the Rule.

In the past, schools have used several methods to negate the effect of the cooling-off requirement. The most prevalent of these practices involved the schools' informing prospective students, typically through their sales representatives or sales materials that, at the time the student signed the enrollment contract, no contract existed. Rather, the schools impressed upon the students that a contract would only exist if the "home office" accepted the enrollment application of the student. (230) Thus, the enrollment contract was, in the mind of the student, reduced to an application to the school. However, the three day cooling-off rule begins to run as of the date when the student signs the enrollment contract.

The evidence in the record, including the testimony of state officials, investigative reporters and counsel for the trade associations, demonstrates that the practice of informing students that their enrollment contracts are not binding until accepted is very widespread. (231)

The process of "acceptance" is frequently coupled with affirmative misrepresentations designed to lull the prospective student into inaction. For example, sales manuals of some of the largest accredited home study schools direct their sales agents to make statements to students urging them not to discuss their enrollment contracts with friends or family, ostensibly because of the possibility that the stu-

dent will not be "accepted" by the school. (232)

The evidence in the record does not support a finding that industry schools engage in such selective screening processes. (233) The Commission finds that the act of deceiving students into not exercising their cooling-off rights by the making of false statements concerning selectivity of enrollment practices violates Section 5 of the FTC Act.

However, even in those cases where the school has not engaged in any affirmative misrepresentation, the Commission finds that there is a need to modify the existing cooling-off requirements. Although there may be legitimate business reasons for a school's desire to review and "accept" enrollment contracts at the home offices of the school—e.g., to screen enrollment contracts or to control the law used to interpret the enrollment contract by controlling the location of the act of "acceptance"—nonetheless, the intended protections of existing cooling-off laws are being effectively negated. (234)

The final rule recommended by the Commission's staff in the Staff Report, included a provision for an affirmation period, in lieu of the cooling-off period, to rectify the practices used to circumvent the intended effect of the cooling-off period. (235) Congress has mandated the use of an affirmation period in connection with the enrollment contracts of veterans and others eligible for veterans benefits in correspondence courses. (236) Industry groups were extremely critical of the staff's proposal to extend the reaffirmation requirement from the present VA requirement to one which would encompass all students. Many schools contended that a mandatory reaffirmation requirement would be inappropriate without clear proof that a less-intrusive remedy, such as cooling-off, was unworkable. (237) Indeed, many commenters affirmatively advocated an extension of the length of the cooling-off period as a vehicle to remedy the abuses of the current cooling-off rule (238).

The Commission has concluded that the concept of cooling-off should not be abandoned in favor of reaffirmation at this time. However, the Commission does believe that a number of minor adjustments are necessary to make the cooling-off period effective.

The major change being made concerns the trigger for the commencement of the cooling-off period. Under the rule adopted by the Commission, all schools are required to disclose to prospective students who sign enrollment contracts, the school's graduation rate. To ensure that students have adequate opportunity to reflect upon these data, and to eliminate the

adverse effects of the "acceptance" process, the rule states that the cooling-off period does not commence until the school has accepted the student's enrollment contract, and mails to the student the required disclosure. (239) This ensures that the legitimate business purposes of the schools' use of the "acceptance" process are maintained. Under the Commission's rule, schools remain free to screen incoming enrollment applications, and to control the forum law applied to the contract. However, the rule similarly ensures that the student will be informed that he or she has been accepted by the school, (240) and precisely when the cooling-off period expires. (241)

The rule requires two notices to be used to explain the cooling-off period to prospective students. The first notice appears in the enrollment contract and explains to the student his or her right to cancel the contract, (242) and how the school will settle the student's financial obligations to the school in the event of cancellation. To provide greater assurance that the cooling-off disclosures are meaningful and not undermined by other representations, the rule requires, as noted above, that after the school has accepted the student's enrollment contract, it mail to the student a notice that informs the student of his or her acceptance, and which specifically states the last day on which the student can cancel the contract.

#### (b) Other modifications.

The Commission has made two additional changes in the cooling-off rule applicable to vocational school enrollment contracts. First, the cooling-off provisions of this rule will apply to all vocational school enrollment contracts, whether entered into in the home of the consumer, at the educational institution, or entirely through the mails. The evidence in the record supports a finding that enrollment personnel in the schools frequently operate under the same compensation and incentive schemes as commissioned sales personnel. (243)

Thus, the cooling-off provision of the rule, Section 438.2, expands the scope of coverage heretofore provided by the FTC's rule on door-to-door sales in order to eliminate undue pressure and deceptions which may occur either at the school or through mailed materials.

Second, the length of the cooling-off period has been extended. A number of schools advocated extending the cooling-off period applicable to vocational school enrollment contracts as a viable substitute for an affirmation period. (244) The Commission's decision to extend the cooling-off period to fourteen days, beginning on the date of mailing of the notice, will serve

to ensure, in the majority of cases, that a prospective student has at least ten days to consider the school's disclosures, as well as his or her decision to enroll in the school. Congress has implemented a similar time period in the case of its veteran reaffirmation requirement. Under the VA requirement, a veteran cannot reaffirm his or her contract prior to the tenth day after the enrollment contract was signed. (245)

#### (c) The Disclosure Forms.

We noted earlier that two notices are required by the rule to inform prospective students of their cooling-off rights under the rule. It is the Commission's intention, in requiring that enrollment contracts include the required explanation of the cooling-off rights, that individual students be able to privately enforce any failure by schools to comply with those rights.

The forms recommended by the Commission's staff in the Staff Report were severely criticized by industry groups for being excessively negative in tone, and, in the words of the industry groups, for suggesting to students that they drop out. (246) To address these concerns the Commission has rewritten the explanation of the student's cooling-off rights—to cast the language in a fashion which will inform the student, in understandable terms, of his or her rights, but which is not suggestive of any particular course of actions, and which also maintains a tone which will impress upon the student the importance of a contract. (247)

#### 4. Disclosure of Graduation and Placement Rates.

In Section 438.3 of the rule, the Commission has required that all schools disclose to prospective students the school's graduation rate. That section also requires that any school which makes an express job or earnings claim disclose to its prospective students, the information which the school knows about the success of its students in obtaining employment after graduation.

#### (a) Graduation and Drop-Out Disclosures.

The rule requires, in Section 438.3(a), that all schools disclose to students who sign enrollment contracts the current graduation rate of the institution for the particular course in which the student has enrolled. This requirement is imposed even if the school makes no affirmative representations concerning its graduation rate.

The record in this proceeding shows that some schools have affirmatively misrepresented their graduation rates when asked by prospective students, (248) and that most commissioned sales personnel do not know what the graduation rates are for particular

courses. (249) While the record does not support a finding that all schools are affirmatively misrepresenting their graduation records, it does show that most schools do not disclose graduation rates to prospective students. (250) The requirement that all schools disclose their graduation rates for each course will effectively eliminate deception in this area.

The record also shows that misrepresentations concerning the placement success of schools occur frequently, (251) although their use is certainly not uniform in the industry. Even in those instances where the school does accurately inform a prospective student of the school's placement record, the prospective student may nonetheless be seriously misled if graduation data are not also provided. For example, if a school enrolls 1,000 students, graduates 900 of them, and 70% of them are able to find jobs, a prospective student could deduce that job prospects in the industry were bright. However, if a school enrolled 1,000 students, graduated 90, and 70% were able to find jobs, quite a different picture of demand in that job market emerges. The Commission finds that the disclosure of graduation rate information is essential to evaluate claims of placement success.

Additionally, the record shows that sales personnel enroll many students who are not qualified or have no real interest in the course. (252) By their terms, the commission schemes currently in use in this industry reward sales personnel for enrolling as many prospects as possible. (253) By requiring schools to disclose their graduation rates, schools whose sales personnel engage in indiscriminate enrollment practices will be encouraged to remedy those practices or face the burden of explaining a very high drop-out rate to an applicant.

The Commission has determined that the graduation rate of an institution, on a course-by-course basis, is information which is material to the vocational school transaction, (254) necessary to make the transaction as a whole non-deceptive, and is a reasonable requirement imposed to prevent the other unfair and deceptive practices identified in this section.

Another line of analysis also supports this requirement. It is a basic tenet of our economic system that information in the hands of consumers facilitates rational purchase decisions; and, moreover, is an absolute necessity for efficient functioning of the economy. If consumers have access to good information on the facts significant to their purchase decisions, then the normal forces of the market are likely to induce sellers to improve those characteristics of the product or service that are most important to the

consumer. In the case of vocational schools, one of the most important items of consumer information, the graduation rate, is not available. Moreover, consumer search costs are so high that there is no realistic way in which any significant number of consumers can become aware of this information. Nor is there any way in which independent third-parties will find it worthwhile to provide good information on a continuing basis since graduation rate data are not available to them. The decision to enroll in a vocational school is one involving a large expenditure, with serious consequences on the future welfare of the student. The evidence shows that the majority of students enrolling in vocational school courses are either unemployed, or if employed, occupy low paying positions. (255) If students must enroll in a course to determine whether they will likely be able to graduate, a painful form of search cost is exacted from the student. At the same time, the relevant information is known to each school in the ordinary course of its business. There is no way in which a school could not know its drop-out rate, and requiring that the graduation rate be disclosed imposes no extra costs on the school except a *de minimis* cost of preparing the information in tabular form and disclosing it to prospective students. Under such circumstances, we think it is reasonable and necessary to require schools to disclose this information.

Industry opposition to a requirement that schools disclose graduation rates has focused on two primary issues. First, schools have contended that a knowledge of graduation rates is not material to the vocational school purchase decision. (256) As noted above, the Commission rejects this argument. Both in terms of negating specific misrepresentations of graduation and placement information, as well as providing a key piece of information for students to assess the likelihood of their completing a course, graduation rate information is material.

The second basis on which schools have contested the mandatory disclosure of graduation information is the potential that exists for misinterpreting this piece of data. Schools have argued that students drop out of courses for numerous reasons unrelated to the quality of the course or the sales or enrollment practices of the school, such as pregnancy, financial difficulties or simple disinterest. (257) The Presiding Officer expressed similar concern over the possible interpretations of a low graduation rate. (258) For example, a low graduation rate may reflect an extremely difficult course of study which only the best students are able to complete, or it



may reflect a high level of deception in the enrollment process, which causes many students to subsequently withdraw.

The Commission recognizes that the graduation rate of a school is not a perfect piece of information. However, it is a vital starting point in informing the prospective student of a material factor to be considered in the decision to enroll in a course. The rule does not prohibit schools from explaining to prospective students the reasons why students have withdrawn from a particular course. In its advertising, sales presentations, brochures, mailings or other contacts with prospective students, a school is wholly free to discuss with the prospective student the causes for withdrawal.

The only limitation on qualifying information is placed on the disclosure form, itself. The school cannot include any additional information on the disclosure form beyond what is required or specifically permitted by the rule.

It is important to understand what these restrictions do not do. They do not prevent the school from showing students the Disclosure Form before they sign the enrollment contract and explaining at that time the reasons for drop-outs or comparing the school's own rate with those of other schools. Nor do they prevent the school from separately mailing to students additional information about drop-outs before or after the contract is signed. Thus schools have every reasonable opportunity to explain and analyze their drop-out rates.

Some schools argued that drop-out disclosures, with out a listing of reasons for dropping out, was inappropriate, and suggested that the Rule should require disclosures of the reasons students fail to complete. (259) In response to this industry concern, the Commission has provided for an optional explanatory statement to be incorporated into the graduation record disclosure form. (260)

In evaluating these figures, you should know that students may drop-out of a course for a variety of reasons. They range from dissatisfaction (with the course to inability to do the work. Other students drop-out of school for personal reasons, such as poor health.

Thus schools, if they wish, can include in the disclosure form itself a general explanation as to what may motivate drop-outs.

Finally, some schools have argued that the adoption of the Educational Amendments of 1976 by Congress (261) has eliminated the need for the Commission to mandate the disclosure of graduation rates because this legislation provides for essentially the same thing. Three important limitations on availability of the informa-

tion under the regulations implementing this legislation make this alternative inadequate. First, under the regulations adopted by the Office of Education, graduation data need only be disclosed on request. (262) Given the pressure surrounding the enrollment process and the characteristics of the vocational school population, it is questionable how many students will affirmatively seek out this information. Second, schools are permitted to charge a fee for providing the information to persons who request it. Third, only schools which receive federal assistance or participate in federal assistance programs are forced to comply with this regulation. (263) The Commission believes that the affirmative disclosure of this information is warranted, especially in view of the minimal burdens associated with gathering it. (264)

#### (b) Placement Rate Disclosure.

In Section 438.3(b) of the rule, the Commission has required schools to disclose to their prospective students information concerning the placement rate of the school, if the school has made any express claims concerning jobs or earnings in marketing the course. The record clearly shows that most students enroll in proprietary vocational school courses for the purpose of obtaining new or better employment in the field of training. (265) The predominant theme in the advertising employed by proprietary vocational schools likewise stresses the theme of job availability. (266)

The record demonstrates that a significant percentage of graduates of proprietary vocational school courses do not obtain employment in the field of their training. (267) While the overall placement picture is poor, there are wide variations among schools and courses as to placement success. (268) The decision as to which career to enter, and what type of training to pursue to accomplish that career objective, is a difficult and complicated one involving considerations of demand, regional variations, students' qualifications, the quality of training, school reputation and employer hiring practices. (269) The evidence from the record is clear that schools have not been voluntarily disclosing to their prospective students their relative success records. In many cases, placement records have been affirmatively misrepresented. This includes specific claims of non-existent placement services. (270)

Far more widespread is the use of generalized claims about job demand or salaries in an industry. (271) Consumers often understand such general claims to be assurances that they will have little difficulty obtaining jobs upon graduation, because they are not informed that general demand for a

job does not translate into a predictor of the value of a course or the success of any particular school's graduates. Furthermore, the educational and training prerequisites which often accompany job projections in documents such as the "Occupational Outlook Handbook" published by the Department of Labor, are uniformly not disclosed by schools in their advertisements. (272)

The importance of placement data describing the school's track-record is so compelling that the disclosure of this information could be justified for all schools, regardless of whether they make job or earnings claims. (273) However, as we discuss below in section C(8) of this statement, a cost is imposed on schools to collect and disclose placement information. In balancing the benefits of disclosing placement information against the burdens placed on schools by such a requirement, the Commission has opted against an across-the-board requirement. Instead, the rule requires that placement information be disclosed to prospective students only when the school makes the issue of jobs and earnings material to the enrollment decision, by making advertising claims in that area.

Far from being a novel remedy, the rule's placement disclosure simply builds on the requirements of the *Pfizer* doctrine. (274) In *Pfizer* the Commission held that it was an unfair act or practice for an advertiser to make a claim for which the advertiser did not have substantiation at the time the claim was made. (275) In the context of this rule, the Commission has ruled that, prospectively, the placement track-record of a school in one piece of the information necessary in every case to substantiate job and earnings claims (in some instances additional substantiation is required as well), and that this information must be disclosed to the prospective student. Given the almost uniform failure of schools to disclose the limitations placed on the use of generalized jobs and earnings projections, and the widespread use of false or deceptive specific jobs and earnings claims, the Commission believes that disclosure of the track-record of the school's graduates is necessary to negate the deceptive character of these claims.

Thus, the reasoning supporting this requirement is analogous to that supporting the requirement of disclosure of graduation rates. The placement record of a school is one of the most important tools for a prospective student to use in choosing a vocational school course; yet, prohibitive costs are imposed on consumers who may wish to evaluate express job and earnings claims in light of a school's actual placement experience. Unlike gradua-

tion information, however, schools will usually have to incur the costs of surveying their graduates to obtain placement and earnings data. Schools can avoid these costs entirely, at their own option, simply by refraining from making express job and earnings claims in marketing their courses. To the extent that a school chooses to make express job or earnings claims, the evidence shows that the costs of collecting the required information are minimal.

As in the case of graduation rate disclosure, schools are in a far superior position to individual consumers to obtain and disseminate this information. The aggregate costs to the schools of gathering and providing these data are substantially less than would be the aggregate of costs to consumers to individually search for this information.

To ensure that the purposes of the rule's placement disclosures are carried out, the rule mandates a uniform format for the disclosures. Uniformity in the disclosure format is necessary to ensure that comparison shopping is possible and that the percentages of graduates obtaining employment are calculated in identical fashion by all schools.

The disclosure required by the rule is a simple one. The school must disclose to prospective students the number of students who graduated from the course and the number and percentage of those graduates who were able to find employment within four months after leaving the course. (276) The school must also disclose the salary levels being earned by students obtaining employment. (277) The disclosure itself does not purport to be the school's complete placement rate, but rather is designed to disclose to the prospective student what the school knows about the success of its graduates.

In the form recommended by the Commission staff, the placement rates of schools would have been required to be calculated as a percentage of all the students who enrolled in a course. For example, if a school enrolled 1,000 students, graduated 100, and placed 50, under the staff's formula the school would have been required to disclose that 5% of those who enrolled found jobs. Many schools objected to this requirement on the grounds that drop-outs should not be included in any calculation of placement rates. (278) While the Commission believes that the percentage of all enrollees who ultimately obtain employment may be informative to prospective students, the Commission has determined that only the percentage of graduates obtaining employment is required to remedy the deceptive use of both general and specific job and earnings

claims. To the extent that a student may wish to determine the placement rate as a percentage of all enrollees, sufficient data is contained in the disclosure form to permit the student to make that calculation.

Some schools would have further refined the figure to exclude students who "were unavailable for employment" or who could not be contacted by the school to ascertain whether they were able to find employment. (279) The Commission has decided not to allow these categories of graduates to be excluded from the placement rate computation. The term "unavailable for employment" is difficult to define and would create significant enforcement difficulties. For example, if a student joins the military or becomes pregnant after completing a course, the motivating factor behind the decision to enlist or have a child may have been the inability of the graduate to obtain employment and remain in the job market. Any exclusion for this category of students which lacked absolute precision could result in schools making and disclosing non-comparable data.

However, the Commission recognizes that by not excluding these categories of graduates, the placement percentages of the school may be adversely affected. To mitigate this, the Commission specifically permits schools to provide an optional paragraph within the placement record disclosure which explains how factors such as non-respondents and non-career goals affect the percentages. (280)

In evaluating our record, remember not all our students took this course to get a job in the field of ——. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

Of course, schools should include the second sentence of the statement only if they were unable to obtain responses from all of their graduates. (Or in the event that all of the students in a course did enroll to obtain jobs the first sentence should not be used.)

A number of schools also objected to the limitation that a student must obtain employment within four months after graduating to be counted as a placement. (281) The Commission believes that this time period is a reasonable one. Although some students may find employment after this time period, this number will be offset by persons who took a job in the field of training and have subsequently left (after four months). Moreover, the longer the time-period after graduation which elapses prior to a graduate obtaining employment, the more attenuated the connection between the completion of the course and the ability

of the student to find employment. In any event, schools remain free to make truthful claims about employment occurring after this time.

#### (c) Trigger for Placement Disclosure.

The Commission has made an important modification to the rule as originally recommended by its staff. Under the rule as recommended in the Staff Report, both express as well as implied job claims would have triggered the obligation of a school to disclose its placement rate to prospective students. The rule as adopted by the Commission only requires that schools make a track-record disclosure if they make express job or earnings claims. Express job or earnings claims are claims which contain explicit verbal or pictorial references to the availability of jobs, the ability of a school's graduates to find jobs or earn stated salaries, or to the existence of placement services. The following are examples of express jobs or earnings claims:

"There is a growing demand for operators of heavy equipment in the construction industry." A depiction of a person engaged in an employment situation who is represented to be a graduate of the school.

"Graduates of our school can earn as much as \$20,000 a year."

"We will train you for a job in the computer programming field."

"Graduates of our school have been placed with some of the nation's largest corporations."

"Semi Drivers needed. Training now being offered."

"Be a truck driver. Earn big money."

As long as the claims made by a school pertain solely to the training being offered by the school and do not expressly refer or depict job availability or salary potential, the claim would not be considered to be an express job or earnings claim. Thus, the following examples, would not trigger the obligation to make a placement rate disclosure:

"We train accountants."

"Be a truck driver."

"Our training is recognized nationwide."

"We offer expert training for draftsmen and accountants."

In determining whether claims are express job claims, the Commission will consider such statements in the context in which they are made. Thus, a television commercial which depicts a person receiving a diploma, carrying it to an employer's office, shaking the employer's hand and being led to a draftsman's table would be an express claim, even if the only verbal representation made was "Be a draftsman."

#### (d) Contemporaneous Disclosure of Track-record.

As noted earlier, the Commission has found that the use of general and specific job and earnings claims, with-



out disclosing the track-record of the particular institution making the claim violates Section 5 of the FTC Act. The proposed rule recommended by the Commission's staff would have required schools to disclose their full "track-record" in any advertisement which contained a job or earnings claim. Numerous schools objected to this requirement, particularly with respect to advertisements carried in the broadcast media. (282) It was contended that the length of the track record disclosure recommended by the staff (which had been substantially shortened by the Commission), would be impractical in the context of the broadcast media—imposing insurmountable space and cost obstacles. In lieu of a full disclosure in advertisements, many schools argued in favor of a brief disclaimer which would simply alert prospective students to the availability of placement data. (283)

Cognizant of the burdens which would attend a requirement that a school disclose its full track-record of placement success in media advertisements, the Commission has opted in favor of a shorter, and simpler, disclaimer notice, (284) even though the disclaimer notice may not be sufficient to eliminate all deceptive characteristics of job claims which are not accompanied by the full track-record.

The Commission must balance the relative benefits which would be derived from a requirement that the full track record be disclosed against the impact such a requirement would have on the ability of schools to provide information to the public through advertising. In the recently adopted rule on The Advertising of Ophthalmic Goods and Services, the Commission placed limitations on the disclosures which could be used to encumber advertisements. (285) Consistent with that precedent and its underlying rationale, the Commission believes it appropriate to strike the balance, in this situation, in favor of permitting schools to continue to make job and earnings claims accompanied by a notice informing students of the availability of the school's placement rate.

While recent Supreme Court decisions have extended first amendment protection to commercial speech, (286) they have recognized that such speech can be regulated in some instances. Thus, the Court has expressly recognized the right of the government to regulate or prohibit false and deceptive advertising. (287) In some instances the appropriateness of affirmative disclosures in standardized format has been acknowledged. (288)

The disclaimer adopted by the Commission for use in media advertisements is brief enough to be incorporated into even the restricted time frames

of broadcast media spots without unduly restricting the advertiser's message.

Some comments have asserted that the Commission is bound to adopt the least restrictive alternative to eliminate the deceptive aspects of commercial speech. (289) These commenters have asserted that the need for a contemporaneous disclosure, or disclaimer, in advertisements is obviated by the subsequent disclosure of the schools' placement record which must be mailed to each student. However, other commenters have argued that the doctrine of "least restrictive alternative," even if applicable to commercial speech, requires only that the least restrictive means be chosen which will cure the deception or unfairness at the time it is made. (290) The Commission does not believe that the doctrine of "least restrictive alternative" is applicable to government regulation of commercial speech. In fashioning its remedy the Commission seeks to employ its expertise to minimize the burdens imposed, a course it has pursued here. However, this is not equivalent to the doctrine of "least restrictive alternative." Even if applicable, the doctrine of "least restrictive alternative" does not compel abandonment of a contemporaneous remedy to a deception simply because an after the fact remedy may exist. The Commission can require a contemporaneous disclosure if necessary to render the speech non-deceptive.

#### 5. Substantiation.

In Section 438.3(f) of the rule, the Commission has required that schools have a reasonable basis for any job or earnings claim which they make, if the claim is not substantiated by the disclosure form (containing the school's graduation and placement rates) required by Section 438.3 (a) and (b) of the rule. (291) The disclosure forms required by those sections will, in most cases, substantiate claims as to a school's most recent graduation rate or placement success. They would not be a reasonable basis for claims such as those alleging demand for a particular skill or claiming graduation or placement success based on projections beyond the base period or periods covered by the disclosure form. The record in this proceeding conclusively establishes that false or unsubstantiated job or earnings claims constitute one of the primary violations of Section 5. (292)

As discussed in section B(3), *supra*, schools have frequently made claims about the general job market demand which have had significant impact on students' enrollment decisions. Under the rule, the disclosure form triggered by such a claim would tell the student about the school's success in placing its graduates, but it would not neces-

sarily substantiate the demand claim the school had made. While the rule does not require affirmative disclosure of a school's basis for such claims, in accordance with the *Pfizer* doctrine the rule requires that the school possess a reasonable basis when making the claim.

Accordingly, if a school makes any job or earnings claim which is not substantiated by its track record disclosure, the school must possess independent substantiation for the claim made. (293) The rule requires that the substantiation consist of a "statistically valid and reliable survey."

However, the Commission has recognized, as an exception to the standards set forth above, the right of schools to rely on job projections prepared by government agencies, such as the Department of Labor's Occupational Outlook Handbook. The rule specifically permits schools to rely on government prepared job and earnings projections as substantiation. If a school chooses to rely on such statistics as substantiation in connection with a job or earnings claim made in a non-media advertisement, the school must disclose in that advertisement all of the caveats and limitations applicable to those data. For example, if a government prepared job projection states that the projections are inapplicable to specific geographic areas, or should not be used to predict employment potential in a geographic area, such must be disclosed in the advertisement. In addition, if a job or earnings projection is modified by other information in the projection such as the type of educational background or work-experience required, this must also be disclosed. For example, if a government publication projects that jobs in the accounting field will increase greatly in the next decade, but that most of these jobs will go to persons with bachelor degrees in accounting, that fact must be disclosed in the non-media advertisement.

Because of the time and space limitations inherent in media advertisements, the caveats which must be disclosed in non-media advertisements when using government prepared job and earnings projections need not be made. The Commission has made this distinction not because it feels that this information is unnecessary in media advertisements, but only because a requirement that all caveats be included in media advertisements would place an unnecessarily severe burden on media ads. Nevertheless, a school could not make any advertising claims in reliance upon such projections if it knew or had reason to know from the caveats accompanying the projections, or for any other reason, that the projections were inapplicable to the school, its enrollees or the local-

ity served by the school. Section 438.3(f) places this restriction on any material which purports to be a reasonable basis, including government prepared job and earnings projections.

#### 6. Pro Rata Refund Calculation.

(a) *Necessity as a Preventive or Remedial Requirement.*

In Section 438.4 of the trade regulation rule, the Commission has specified the refund formula which must be employed by schools subject to the rule. There are three major components to this refund formula. First, the student's financial obligation in the event of withdrawal must be determined on a pro rata basis which essentially equates the student's financial obligation to the school with the percentage of the classes attended by the student, or in the case of a correspondence course, the number of lessons submitted. Second, the refund formula permits schools to retain a registration fee to recoup the school's cost of processing the student's enrollment. Finally, the formula permits, under certain circumstances, schools to separately charge students for any equipment provided to the student during the course which is not returned to the school.

In adopting Section 438.4 of this rule, the Commission has not made a finding that existing refund policies violate Section 5's proscription of "unfair or deceptive acts or practices." Rather, the Commission has predicated the requirements of Section 438.4 on its ability to prevent and remedy practices violative of Section 5 of the FTC Act pursuant to Section 18 of the FTC Act, which empowers the Commission to adopt trade regulation rules which include requirements designed to prevent occurrences of acts or practices that have been defined as unfair or deceptive under Section 5. (294)

In other sections of the trade regulation rule, the Commission has defined with specificity unfair or deceptive acts and practices. For example, Section 438.2 of the rule addresses numerous unfair and deceptive acts engaged in by industry schools which attempt to, or have the effect of, circumventing the Federal and State cooling-off rules. (295) In Section 438.3, the Commission specifically defines the making of jobs and earnings claims without disclosing the information necessary to make those claims non-deceptive to be unfair and deceptive.

The Commission has found that many of the unfair and deceptive advertising and enrollment practices engaged in by industry schools cannot be easily proscribed; or, if proscribed, cannot be readily enforced without imposing substantial regulatory burdens on both industry and the Commission. In section (B) of this Statement for example, the Commission outlined the

issues associated with the use of commissioned sales personnel to sell vocational education. In the discussion of the effect of the compensation format for sales personnel, it was noted that the use of commissions, (296) and quotas (297) together with sales personnel untrained in counseling or screening (298) led to frequent deception in the marketplace.

Specifically, the Commission found that current compensation schemes reward both the sales personnel as well as the schools for enrolling students on the basis of direct misrepresentations such as help wanted advertisements, (299) misleading placement claims, (300) and inaccurate descriptions of such matters as course content and facilities, (301) the qualifications of sales personnel, (302) and selectivity of admission policies. (303) In addition, the Commission found that the compensation schemes encouraged sales personnel and schools to withhold from the market material information concerning the school's placement and graduation rates. (304)

The pro rata refund provision of the rule adopted by the Commission is designed to alter the incentive structure for obtaining vocational school enrollments. No longer will schools be able to derive any significant financial benefit from engaging in unfair or deceptive enrollment practices. By equating the student's financial obligation with the length of his or her stay in the course, schools will be financially motivated to enroll only students with a genuine interest in the course. The use of deception to enroll students will no longer result in the creation of a large financial obligation to the school in the event of withdrawal. (305)

The rule avoids the burdens and deficiencies of any attempt at detailed policing of the practices described. Instead, it minimizes the extent of regulation while at the same time effectively curtailing practices violative of Section 5 of the FTC Act. The Commission's rule on door-to-door sales, 16 CFR Part 429, similarly seeks to eliminate undue pressure and unfair sales practices through an indirect remedy rather than proscribing all of the possible objectionable conduct.

As set forth below, some of the interested parties in this proceeding oppose the refund requirement. None have suggested any alternative regulation that would protect consumers effectively without requiring an undesirable, and ultimately unattainable, regulatory intrusion into day-to-day school operations. The Commission believes the refund and cooling-off provisions of the rule are necessary to provide adequate protection for students without imposing unreasonable regulatory burdens.

#### (b) Industry Opposition to Pro Rata.

In 38 U.S.C. Section 1776(c), Congress set forth the refund policy to be followed by correspondence schools participating in the Veterans Benefits programs. Some participants in this proceeding contended that this Congressional enactment precludes the Commission from requiring that a more stringent refund standard be followed by correspondence schools. (306) The Commission requested an interpretation of 38 U.S.C. § 1776(c) from the Veterans Administration. (307) The VA has stated that it interprets 38 U.S.C. § 1776(c) as merely establishing the minimum refund standard which must be employed by correspondence schools participating in the Veterans Benefits programs. (308) The VA further concluded that it does not view its statutory mandate, as expressed in Title 38, as precluding the Commission from requiring adherence to a more stringent refund standard.

The Commission does not believe that the minimum refund standard set forth by Congress precludes Commission adoption of Section 438.4 of this trade regulation rule. The Commission has not found that continued adherence to the refund policy set forth in 38 U.S.C. Section 1776(c) is an unfair act or practice within the meaning of Section 5(a)(1) of the FTC Act. Rather, the Commission has found that to prevent other specifically defined unfair acts and practices, and to minimize the amount of regulation that would otherwise be required, it is necessary to eliminate the financial incentives which encourage schools to enroll students through deception and misrepresentation. The refund policy established by the Commission in Section 438.4 is the vehicle adopted by the Commission to accomplish that end.

A number of schools have objected to a pro rata refund requirement on the ground that it would not permit them to recoup their expenses when a student drops out. (309) In effect, schools have argued that they will be forced to raise their tuition to cover the loss in revenue which would attend a pro rata requirement. (310) As a consequence, it is argued, students who remain in school would be subsidizing drop outs through the payment of higher tuition. (311) In his report, the Presiding Officer in this proceeding concluded that a pro-rata refund policy might not adequately compensate a school for its fixed costs in all cases. (312)

In evaluating this argument one must differentiate among the various types of fixed costs involved. What the commenters refer to as "fixed costs" often include a sizable component for student acquisition costs such as advertising costs and commissions. For



some schools these can amount to 30% to 50% of total operating expenses. (313) The record here indicates that such high acquisition costs are frequently accompanied by unfair and deceptive sales practices. Under current refund policies each drop out makes a disproportionate contribution to such expenses. A school not only profits directly from using unfair and deceptive practices to enroll students, it profits indirectly in that the subsidization of graduates by drop outs permits the school to maintain the face price of the course at a level below the true cost of producing a graduate, thus increasing the overall demand for the school's product. (314)

Other kinds of fixed costs present greater difficulties. The argument against pro-rata is that the enrollee has occupied a place in the class and has committed himself or herself to paying his or her share of the fixed costs. If he or she drops out, it is argued, then any refund greater than actual cost savings to the school necessarily and unfairly shifts these costs to the students who remain enrolled.

There are several responses to this. First, to the extent that a school obtains enrollees through unfair or deceptive practices, the same argument applies to fixed costs as applies to acquisition costs. The marketplace in vocational school courses should function more effectively if such costs are more reasonably related to the production of graduates, not the production of enrollees. Second, as a practical matter, the situation rarely arises. A necessary predicate of the so-called "empty chair" is that a course vacancy has occurred because another prospective student was turned away from the school in favor of the student who subsequently withdrew. However, the proponents of this argument have failed to produce any substantial evidence to support this argument. The record evidence simply does not support a finding that schools have turned away prospective students because of enrollment limitations.

If all schools covered by the rule engaged in unfair or deceptive practices there would be little doubt about the appropriateness of a pro rata refund policy. The Commission's conventional fencing-in authority is more than broad enough to justify a pro-rata refund in such cases. However, not all schools have engaged in practices violative of section 5 of the FTC Act, and the pro rata refund requirement is being imposed under the statutory authority of the Magnuson-Moss Act, not the general fencing-in authority applicable to adjudications. Thus, the matter squarely presents the question of the Commission's authority to impose requirements on businesses which may not have engaged in the

particular practices found to violate Section 5.

That this authority exists is beyond dispute. In giving the Commission authority to promulgate industry-wide trade regulation rules which include the power to enact provisions to prevent unfair or deceptive acts or practices, Congress clearly intended to enable the Commission to fashion remedies of sufficient scope to be effective. Almost any rule with industry-wide impact will affect some segment of the population which may not have engaged in the offensive conduct. At the same time, the Commission recognizes the undesirability of imposing prophylactic burdens out of proportion to the problem involved.

This is not a matter which lends itself to elaborate quantitative calculation. As discussed earlier, the difficulties in pinpointing an exact level of prevalence are formidable, and would make any such calculation suspect. More important, however, is the structure of the rule. As we have repeatedly emphasized, this rule, and particularly the pro-rata provision, is designed not as a command-and-control rule specifying the details of day-to-day conduct, but as a rule which eliminates unfair and deceptive practices by changing the incentive structure which has produced them. Under such circumstances the Commission can be confident that the pro rata refund policy moves the incentive structure in the proper direction, but no analytic methodology exists that would predict the exact magnitude of the changes.

This leaves the question whether the pro-rata refund requirement imposes burdens on schools that have not violated Section 5 which outweigh these real, though indeterminable, benefits. The Commission does not believe it will, largely because it does not believe that the net effect of the provision will be to impose an undue burden upon schools. (314a) While it is important to recognize that any refund provision is likely to have an uneven impact upon different schools, the Commission is persuaded that most schools will have adequate information available to predict drop-out rates, (315) and can revamp their course price structure to reflect the new refund policy. To the extent that course costs rise in response to the adoption of pro rata refund formulations, they should basically reflect the true cost of educating a "stay-in-school" student. In some cases, albeit a limited number, an incremental increase in costs above true market levels for educating a graduate may occur. In these cases a burden will be imposed, not on the school, but on the graduates of that school. While the Commission is cognizant of this possibility, on balance, the Commission be-

lieves that the policy choice of a pro rata refund policy it has made is necessary. Indeed, any incremental increase in tuition costs above the cost of educating a graduate simply constitutes a "drop-out insurance policy" for such students. In effect, should this occur, the student would be incurring an expense to have the benefit of a pro rata refund which would protect the student should he or she opt for cancellation. The primary point to be made, however, is that the Commission does not anticipate this outcome as a likely one.

In the rule adopted by the Commission, schools are given an option as to whether to include "equipment" within the cost of the course which is subject to the pro rata refund requirement. A school may, at its option, disclose in the enrollment contract the amount it is charging for any equipment that it is providing to the student. In the event that a student withdraws from such a course, the school may charge the student the full amount for that equipment if the student fails to return the equipment to the school within a specified period of time. (316) If the student does return the equipment, the school must include the cost of the equipment in the total cost to the student which must be pro-rated.

A number of schools argued that they should be permitted to retain the "fair market value" of any equipment which they provide to their students. (317) The inclusion of a requirement in the rule that schools charge only the fair market value of the equipment provided produces significant problems. First, it is difficult to determine what is the fair market value of course materials to be distributed to students, particularly in the case of a correspondence course. Second, effective enforcement of such a requirement would involve the Commission in a myriad of determinations as to whether the price charged by a school for a particular piece of equipment was the "fair market value."

However, the Commission does recognize that some exemption for equipment is appropriate. The Commission's equipment exception permits schools to retain the full amount charged for any equipment not returned to the school, and a pro-rata portion for any equipment returned. (318) The Commission's policy on equipment is considerably more liberal to schools than are the policies currently employed by many states and two of the major accrediting associations. (319)

The final issue concerning Section 438.4 is the adequacy of the registration fee permitted under the rule. The rule permits schools to retain a maximum of \$75 registration fee for any

student who enrolls and does not cancel during the cooling-off period. (320) This \$75 maximum figure represents an increase over the \$25 maximum which had been recommended by the Commission's staff. (321) A number of schools had argued that the amount recommended by the staff was insufficient to permit them to recoup the per capita expenses incurred in soliciting and enrolling a student. (322)

The Commission has permitted schools to retain a registration fee to cover the costs reasonably associated with processing an enrollment application. It is not designed to permit schools to recoup the advertising and enrollment expenses associated with obtaining an enrollment. If the Commission were to set the registration fee at a level which permitted schools to recoup their expenses in attracting potential students, the incentive structure would favor a return to the enrollment practices which gave rise to this rule. The figure chosen by the Commission is within the range supported by many of the schools commenting on the rule. (323)

#### 7. Preemptive Effect of the Rule.

In Section 438.9 of the rule, the Commission has set forth the extent to which the rule preempts inconsistent state laws, rules, and regulations. A number of states currently specify cooling-off periods applicable to vocational school enrollment contracts, refund policies, and other similar matters. The Commission believes that it is desirable to have the states experiment with alternative forms of consumer protection in the areas covered by the Commission's rule, so long as the state's activities satisfy the minimum standard of protection provided by the Commission's rule.

To ensure that the states retain the right to experiment and evolve alternative regulatory schemes in the areas covered by the rule, the Commission has, in Section 438.9 of the rule, set forth the process by which states may apply to the Commission for an exemption for their laws from the effects of the rule.

Unfortunately, the decision as to whether a state law "affords greater protection" to a student is not always clear cut. Consider, for example, a refund policy with the following attributes:

- (a) A \$25 flat registration fee;
- (b) Pro rata formula to the 75% mark in the course after which no refund is required;
- (c) No provision for a separate equipment charge;
- (d) A private right of action for a student who does not obtain the proper refund; and

(e) Required contract language which is extremely legalistic and difficult to understand.

In some respects, such a refund policy would be more stringent than that adopted by the Commission, while in other respects the Commission's rule would be more protective. Since both the state law and the Commission's rule would mandate language, a school would be faced with the dilemma of complying with either state law or the FTC's rule. If a school faced with this decision resorted to state court or federal court for a declaratory judgment, it would create a situation where different courts might arrive at conflicting conclusions on whose law was applicable.

If, alternatively, a school requested an advisory opinion from the Commission, the Commission's opinion would not necessarily bind a state court that could conclude that the Commission was wrong, and that the state law was (or was not) applicable. The level of uncertainty which would result from this approach is not only undesirable, but also intolerable for the states, the Commission, and the affected schools.

The Commission has specified in Section 438.9 of the rule that state or local governmental entities may petition the Commission to obtain an exemption for their statutory provisions, if they believe that the comparable state provisions afford consumers greater protection than does the Commission's provisions, and the state requirement would not frustrate the purpose of the rule's provisions. Any action by the Commission to grant such an exemption petition would be conducted in accordance with 5 U.S.C. Section 553.

The exemption process employed by the rule is similar to that used by Congress in Title I of the Magnuson-Moss Act (324) to exempt state warranty laws which offer greater protection to consumers than the analogous Magnuson-Moss provisions, (325) by the use of Section 553 rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. Section 553. (326) Moreover, the exemption process contained in the rule accords with the standards set out in Section 18(g)(7) of the FTC Act which provides that:

Any person to whom a rule under Subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule . . . Section 553 of title 5, United States Code shall apply to action under this paragraph.

Section 438.9 of the rule also addresses the factors which will be considered by the Commission in determining whether an exemption is warranted.

The Commission will consider factors such as the means available to the

state to enforce their provision, the existence of any private rights of action by an aggrieved consumer, and the "readability" of notices directed to the consumer to understand his or her rights under the state law.

In some cases, the Commission will necessarily have to balance competing considerations. For example, a state law which applies a more stringent substantive standard than the Commission's cooling-off rule (Section 438.9 of the rule) but which lacked a private right of action (either explicitly by statute or through a lack of mandated contract language) or contained inadequate notice provisions might not satisfy the general standard of "greater protection to the student."

Finally, it should be emphasized that only state or local governmental entities may request exemptions from the Commission's rule under Section 438.9. Schools and other private parties may not avail themselves of this process. The determination to grant an exemption to state law will necessarily place the primary enforcement burden back onto the state to enforce its provision. Such a decision should be made solely by the state entity involved. The only exemptions available for which schools may apply is that available under Section 18(g) of the FTC Act; i.e., should a school believe that its peculiar circumstances warrant an exemption from the rule, it may petition the Commission.

#### 8. Economic Impact on Small Businesses and Consumers.

It is difficult to assess, with any great degree of certainty, the likely effect of this trade regulation rule on small businesses. The evidence in the record in this proceeding establishes that a very high percentage of persons who enroll in vocational school courses drop out of those courses, frequently during the first few classes, or after having submitted only a few lessons. (327) In part, this high rate of early drop-outs is the direct result of the unfair and deceptive advertising and enrollment practices employed by some schools to recruit potential students. (328) For example, counsel for two of the major accrediting organizations admitted that many schools engaged in practices which negate the effectiveness of existing cooling-off periods. (329) Thus, it is likely that to the extent that this rule eliminates unfair or deceptive advertising and enrollment practices, and ensures students a full and fair cooling-off period after enrollment, the rule will have the effect of reducing the number of students who enroll in courses covered by the rule. Although the rule will thus be reducing the demand for this educational service, it will not be reducing demand among those persons who are genuinely interested in the product



and service being offered by industry schools. Rather, the rule will prevent or at least limit enrollments by persons whose enrollments have been secured through practices which violate Section 5 of the FTC Act.

Although the majority of all institutions covered by this rule would be considered "small businesses" the Commission nonetheless believes that all schools, regardless of size, should remain subject to the rule. The rule recommended by the Commission's staff would have exempted from its coverage schools which enrolled fewer than 75 enrollees in a single year. Thus, many of the smallest schools would not have been directly affected by the rule. However, considerable negative comment was submitted by other schools concerning this exemption. Some of these comments contended that the 75 student limit was arbitrary and unrealistically low. (330) Other comments claimed that the record demonstrated that the practices engaged in by schools enrolling fewer than 75 students per year did not differ substantially from larger institutions. (331) The Commission's staff recommended this exemption primarily to minimize the enforcement burden on the Commission. However, the Commission finds this reason to be insufficient to warrant an exemption in this case.

We have discussed in each section of this statement, how students and potential students will benefit from the substantive requirements of this rule—and compared these benefits to the costs and burdens imposed on schools subject to the rule. The Commission believes that these benefits significantly outweigh the costs which complying with the rule will impose on either the schools or consumers. Set out below is a brief recapitulation of the burdens and benefits deriving from the rule.

Very little additional cost is imposed on the schools by the cooling-off provision. Schools already comply with the technical requirements of federal and state cooling-off laws (although they frequently employ conduct designed to negate the effects of those protections) and the extension of this rule both in terms of time (fourteen days instead of three) and coverage (all enrollments instead of only those consummated away from the place of business of the school) will not appreciably increase present compliance costs. (332)

On the other hand, the potential student will be protected against the untoward consequences of the acceptance process and will receive a longer period of time to consider his enrollment decision and evaluate the school's track record.

The costs of making the track record disclosures are also minimal. The collection of graduation rate information and its disclosure imposes no significant economic burden on the schools. The information as to how many students graduate from a course and how many drop out is readily available and most schools already generate the information in the normal course of their operation.

Schools which make express jobs or earnings claims will usually have to incur the costs of surveying their graduates to obtain placement and earnings data. However, this information is necessary to prevent deception and to place typical jobs and earnings claims in a perspective which is meaningful to the potential student. The Commission has found that the placement record of the school is one of the most important tools a prospective student can have in evaluating his or her enrollment decision. Moreover, the information required to be disclosed by the rule is the kind of information schools must have in any event under existing law in order to substantiate a job or earnings claim. Furthermore, to the extent that schools will incur costs in gathering this information, the evidence shows that this cost will not be substantial. (333) Finally, schools can avoid survey costs entirely by not making express jobs or earnings claims.

Insofar as the substantiation requirement is concerned, the cost a school must bear is dependent upon the support which already exists for any given claim. If a reasonable basis is already available, costs will be insignificant. If no support exists, the school may have to incur the cost of conducting a survey in order to substantiate a claim it desires to make. However this is a value judgment entirely within the control of the school.

The pro rata refund requirement imposed by Section 438.4 of this rule may have the effect of decreasing the gross revenues of some institutions. However, such a reduction should only occur to the extent that unfair advertising and enrollment practices are being used. In some cases, there may be rises in course costs. Nevertheless, the evidence demonstrates that under current refund policies, drop-outs are frequently subsidizing the "stay-in-school-students," thereby permitting schools to maintain course costs below the levels which a properly functioning market would establish. (334) Thus, to the extent tuition costs may rise in some instances, that fact is likely to reflect only the true costs of educating a student through to graduation.

The benefits of imposing the pro rata refund are the elimination of incentives to engage in the harmful mar-

keting practices which the Commission has found to exist in the vocational school industry. As we have already discussed in section C(6), *supra*, the Commission believes that the pro rata refund remedy is a very effective means of preventing these marketing abuses from continuing.

#### 9. Readability of the Rule.

In this rule, the Commission has taken a major step toward the goal of writing understandable regulations. The rule requires that two notices be directed to students; the first of these is inserted in the enrollment contract, the second is mailed to the student after the enrollment contract is signed. (335) These notices explain to the student his or her cooling-off and refund rights. In addition, the rule specifies the format to be used by schools to inform potential students of the school's graduation and placement rates. (336) Each of these documents has been carefully written, and they have been reviewed by "readability" experts to help ensure that the language used is readable.

In the version of the rule recommended in the Staff Report, a similar effort had been made to ensure that the notices were readable. However, the notices recommended at that time were subjected to considerable criticism by schools who contended that the notices were unduly simplistic, negative in tone, and suggestive to students that they should drop out of the school. (337)

The notices adopted by the Commission are premised on two basic principles. First, language was employed which would impress upon the consumer the solemnity which should attend the execution, or cancellation, of a contract. Second, readability and brevity are not necessarily synonymous.

The notices which the rule requires vary with type of course, and whether or not the school makes a separate equipment charge. In all, there are eight different course options, each of which requires different language in the notices. (338) Just as the notices were drafted to be easily understood by consumers, the notices have been written so as to enable a school to read the rule and quickly ascertain precisely what conduct is required of it. Cross references and bracketed alternative language have, where possible, been eliminated. Thus, for each of the eight course options, the rule contains the complete notice required, with the optional language inserted for each case. Although such specificity increases the length of the rule it greatly enhances the ability of a school to look at the rule, and see precisely what language must be included in its notices.

#### 10. Effective Date of the Rule.

In establishing January 1, 1980, as the effective date of the rule, the Commission was cognizant of two factors. First, schools would need time to acquire graduation and placement information for their disclosure forms; second, schools would need lead time to make changes in their documents and promotional materials.

Graduation and placement information must be gathered in terms of base periods six months long. Additionally, a four month period must elapse before information from the most recent base period can be used. The effective date set by the Commission will allow schools to start with the period, January 1, 1979, through June 30, 1979, as the first base period.

The rule requires a four base period disclosure (2 years), where available for home study schools because of the longer enrollment times involved. A minimum two base period disclosure is permitted if students have enrolled only during those periods. Similarly, for residence schools without fixed class schedules, the disclosure will usually be comprised of two base periods. The rule's effective date does not provide enough time for initial disclosures covering more than one base period. Therefore, for the first six months after the effective date, those schools will have to disclose the information for only one base period even if the disclosure places the overwhelming majority of students in the "still enrolled" category. This represents a temporary deviation from the rule's standard. However, the Commission believes that, in the interim, some information is better than none at all.

The lead time permitted by the Commission should be ample for the changes which must be made in schools' documents and promotional materials. This time should also permit schools to expend or significantly reduce current supplies of non-complying materials.

#### FOOTNOTES

- 39 Fed. Reg. 29385. The rule adopted by the Commission covers only "for-profit" vocational schools and does not cover any programs offered by those schools which culminate in a standard college degree. These issues are discussed in sections B(1) and C(2), *infra*.
- P.L. 95-637, 88 Stat. 2183, 15 U.S.C. § 2301 (1975).
- 40 Fed. Reg. 15232 (April 4, 1975); 40 Fed. Reg. 33966 (Aug. 13, 1975).
- 40 Fed. Reg. 21048 (May 15, 1975).
- 40 Fed. Reg. 44582 (Sept. 29, 1975).
- Hearings were convened in San Francisco on December 1, 1975; in Los Angeles on December 15, 1975; and Chicago on January 12, 1976.
- All such comments were separately filed under category K of the public record and appear in volumes 215-38-1-11-1 through 215-38-1-11-17.

8. This "rebuttal" comment period commenced on February 1, 1976 and concluded on March 1, 1976.

9. 41 Fed. Reg. 47267 (Oct. 28, 1976).

10. 40 Fed. Reg. 55368 (Nov. 28, 1975).

11. 42 Fed. Reg. 1483 (Jan. 7, 1977).

12. Federal Trade Commission (Bureau of Consumer Protection), Staff Report on Proprietary Vocational and Home Study Schools and Proposed Trade Regulation Rule, Exhibit P-1 at 337-50. (Hereinafter cited as "Staff Report").

13. All such comments were separately filed under category Q of the public record and appear in volumes 215-38-1-18-1 through 215-38-1-18-3.

14. Exhibit O-2.

15. 42 Fed. Reg. 62496 (Dec. 13, 1977); see also 42 Fed. Reg. 60561 (Nov. 28, 1977).

16. Staff Report at 9.

17. Although called "residence," most such schools do not offer away-from-home training with rooming facilities; the majority offer solely classroom training to which students commute from home.

18. See Staff Report at 9.

19. *Id.*

20. Examples of courses offered by trade and technical schools include training in mechanical skills, welding, drafting, truck driving and heavy equipment operation, electronics, broadcasting, medical and dental assistant duties, and travel services.

21. E.g., training in secretarial skills, bookkeeping, accounting, data processing, and fashion merchandising and modeling.

22. Flight schools offer courses designed to qualify students in mechanical skills applied in the aviation field.

23. E.g., training in hair styling, barbering, beauty treatment, and complexion care.

24. See Staff Report at 10.

25. *Id.*

26. *Id.* at 18-19.

27. *Id.* at 20-21.

28. Comments of the National Home Study Council, p. 4, Exhibit K-439.

29. A 1974 Veterans Administration study showed that 66% of all home study students were enrolled in courses related to the following six occupational groups: electronic mechanics and repairmen; automobile mechanics and repairmen; air-conditioning, electronic technicians; heavy equipment operators; and electrical trades. *Veteran Participation in Correspondence Courses in Schools Other than College, Fiscal Year 1974*, attachment to letter of O. Vaughn, Chief Benefits Director, Veterans' Administration (Sept. 4, 1974), Exhibit H-149. See Staff Report at 11.

30. See Staff Report at 9-10.

31. *Id.* at 19-20.

32. National Commission on the Financing of Postsecondary Education, *A Context for Policy Research in Financing Postsecondary Education*, A Staff Report, p. 83, Exhibit H-157 (hereinafter cited as "NCFPE").

33. National Center for Education Statistics, *Schools with Occupational Programs*, p. 17, Exhibit H-237.

34. A 1976 Veterans Administration study showed that veterans paid an average of \$728 for home study courses. Office of the Controller, VA Training by Correspondence Under the G.I. Bill (June, 1976), pp. 25, 29. See Staff Report at 21-22.

35. Attachments to the testimony of G. O. Allen, President, Cleveland Institute of Electronics, Field Policy Manual, Exhibit L-119.

36. Comments of Bell & Howell Schools, Inc., Exhibit K-856.

37. See Staff Report at 14-15.

38. *Id.* at 15-16.

39. *Id.* at 16-17.

40. *Id.* at 16-17.

41. National Home Study Council, *Annual Reports of Schools*, Exhibit B-29.

42. See Staff Report at 17.

43. Stanford Research Institute, *Private Occupational Schools*, p. 2, Exhibit A-35.

44. Approximately 1,500 of the estimated 7,000 schools were accredited in 1974. See Staff Report at 9, 12-13.

45. A discussion of the functions of the accrediting associations appears at B(8)(c), *infra*.

46. See Staff Report at 13.

47. 38 U.S.C. Chapters 34, 35, and 36. See Staff Report at 280-283.

48. 38 U.S.C. Chapter 36.

49. See Staff Report at 250-264.

50. *Id.* at 24-25.

51. *Id.* at 25-26.

52. Submission to accompany the testimony of J. O. Brown, President, NHSC, Exhibit L-131.

53. Comments on Bell & Howell Schools, Inc., Exhibit K-856. See Staff Report at 28.

54. See Staff Report at 27-28.

55. American Institute for Research, *A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs* (1972), p. N-12, Exhibit A-3 (hereinafter cited as "AIR Study").

56. *Id.*, at N-16.

57. See Staff Report at 28.

58. *Id.*

59. *Id.* at 28-29.

60. *Id.* at 29.

61. *Id.* at 29-30; Report of the Presiding Officer, Proposed Trade Regulation Rule: Advertising, Disclosure, Cooling-off and Refund Requirements for Proprietary Vocational and Home Study Schools (Sept. 10, 1976), Exhibit O-1, at 23 (hereinafter cited as "Presiding Officer's Report").

62. *Id.* at 31-34.

63. *Id.* at 34-35.

64. NCFPE, *supra* note 32, at 129.

65. Such sources include the College Work Study Program, Manpower Development and Training Act programs, National Defense Student Loans, and various aid programs sponsored by the individual states. See Staff Report at 35.

66. Submission to accompany the testimony of J. O. Brown, President, NHSC, Exhibit L-131.

67. See Staff Report at 35-37.

68. "Summary of Responses to Questionnaire Sent to Veterans and Servicemen Who Had Received Educational Assistance from the Veterans' Administration for Enrollment in Correspondence Courses as of June 30, 1970," Exhibit C-43; AIR Study, *supra* note 39.

69. *Id.*

70. See Staff Report at 36, note 48.

71. *Id.* at 36, note 49.

72. See Staff Report at 37-42; Presiding Officer's Report at 39-41.

73. See Staff Report at 44-71; Presiding Officer's Report at 33-35, 54.

74. See Staff Report at 44-47; Presiding Officer's Report at 85.

75. See Staff Report at 47-51; Presiding Officer's Report at 34.

76. See Staff Report at 51-52; Presiding Officer's Report at 34-5.

77. See Staff Report at 52-56.

78. *Id.* at 56.



79. *Id.* at 57-65.  
 80. Although student testimonials may, in some instances, reflect a generally successful placement record, experts agree that such testimonials are inherently misleading, since they do not provide the prospective enrollee with any realistic measure by which to predict his or her own potential for success. See Staff Report at 65-66.  
 81. The record shows that placement claims such as "(our) constant efforts have often resulted in far more positions than the supply of qualified graduates" are used more frequently than explicit placement percentages. See Materials from File No. 742 3161, Job and Opportunity Advertisers, Unnamed, Exhibit C-210.  
 82. See Staff Report at 66-68.  
 83. *Id.* at 68-71.  
 84. When schools' advertising does contain references to specific percentages or numbers of graduates placed and salaries obtained, students are still apt to be misled because of inherent methodological and contextual variances in such data. Because no industry-wide standards for calculating such statistics exist, each school is free to devise its own criteria as to what types of data will serve as the basis for its claims and how that data will be interpreted for advertising purposes. As a result, students not only are unable to make valid comparisons among competing schools' claims but are misled by the failure to explain the methodology underlying the statistics. See Report at 69, 383-384.  
 85. See Staff Report at 69; Presiding Officer's Report at 75-6.  
 86. See Staff Report at 70-71, 384, 387-389; Presiding Officer's Report at 76.  
 87. See Staff Report at 71-79.  
 88. *Id.* at 72.  
 89. The Handbook is a massive compilation of information which describes job requirements and projected demand in selected occupations. It also contains information on the educational and work experience prerequisites for jobs in each field. See Staff Report at 72-75.  
 90. See Staff Report at 74-77.  
 91. See Staff Report at 77-78; Presiding Officer's Report at 75-76.  
 92. See section B(7), *infra*; and Staff Report at 73, 390.  
 93. See Introduction to the Occupational Outlook Handbook, Attachment D to Comments of the U.S. Department of Labor, Exhibit K-623; and California Department of Labor, California Labor Supply and Demand, Exhibit C-198.  
 94. For example, the preface to the Labor Department's Handbook provides the following cautionary note: Information about future outlook in an occupation is very difficult to develop. No one can predict future labor market conditions with perfect accuracy. . . . Methods used by economists to develop future occupational prospects differ and judgments which go into any assessment differ. Therefore, it is important for users of the Handbook to understand what underlies each statement on outlook. (Comments of Department of Labor, Attachment D, Exhibit K-623).  
 95. *Id.* See also Staff Report at 391-392.  
 96. *Id.*  
 97. See, e.g., testimony of J. Wich, Assistant Professor of Marketing, University of Oregon, Tr 4210 at 4220-24.  
 98. See Staff Report at 77-78.  
 99. *Id.* at 79-105.  
 100. *Id.* at 80-82.

101. *Id.* at 82-85.  
 102. *Id.* at 85-86.  
 103. *Id.* at 86-87.  
 104. *Id.* at 92-96.  
 105. *Id.* at 88-90.  
 106. *Id.* at 90.  
 107. *Id.* at 90-91.  
 108. See e.g., 16 CFR Part 429.  
 109. See section B(4)(a)(2), *infra*; and Staff Report at 92.  
 110. See section B(4)(a)(3), *infra*; and Staff Report at 91.  
 111. See section B(5)(b), *infra*.  
 112. *Id.*  
 113. See Staff Report at 106-107.  
 114. See Staff Report at 110-111; Presiding Officer's Report at 41-46.  
 115. See Staff Report at 109-111; Presiding Officer's Report at 42-46.  
 116. See Staff Report at 109-110; Presiding Officer's Report at 42-46.  
 117. See, e.g., Statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman Schools, La Salle, Jetma) (Jan. 27, 1976), Exhibit E-206.  
 118. See Staff Report at 109-110; Presiding Officer's Report at 50.  
 119. See Staff Report at 108.  
 120. See Staff Report at 112; Presiding Officer's Report at 38, 46-48.  
 121. See Staff Report at 112.  
 122. *Id.* at 113-121.  
 123. See Staff Report at 113-116; Presiding Officer's Report at 50.  
 124. See Staff Report at 119-120; Presiding Officer's Report at 50.  
 125. See Staff Report at 123; Presiding Officer's Report at 50-54.  
 126. See section B(5), *infra*; and Staff Report at 114.  
 127. See Staff Report at 114.  
 128. *Id.* at 121-123.  
 129. See Staff Report at 123-124; Presiding Officer's Report at 48-49.  
 130. See Staff Report at 125.  
 131. The record documents several instances where sales personnel identified themselves as representatives of the Veterans Administration or the Department of Health, Education, and Welfare who were responsible for making government loan money available to students. See Staff Report at 126-127; and Presiding Officer's Report at 34.  
 132. See Staff Report at 127-131. For example, a large home study school's sales training manual contains the following directive: "You (the . . . salesperson) need to sell the interview first. Establish yourself as a counselor or advisor, not a money-grubbing, hit-and-run, fast buck artist. Overcome his natural suspicions." "Planned Sales Presentation for CREI Electronics Program," a division of the McGraw-Hill Continuing Education Co. (April 1972), Exhibit E-132.  
 133. See Staff Report at 125.  
 134. See Staff Report at 131-152; Presiding Officer's Report at 33-39, 47.  
 135. The testimony of numerous salespersons and school sales training manuals in the record contain elaborate descriptions of the negative sell strategy. See, e.g., Staff Report at 131, note 73; at 132, note 75; at 135, note 77.  
 136. See Staff Report at 134-143.  
 137. *Id.* at 137-143.  
 138. Testimony of A. Goldberg, former American Motel Schools salesman, Tr. 2799 at 2801.

139. Testimony of M. Cohen, former American Training Service salesman, Tr. 2213.  
 140. See Staff Report at 150-152.  
 141. See, e.g., Lewis Hotel/Motel School, sales interview script, Exhibit E-23.  
 142. See Staff Report at 152.  
 143. See Staff Report at 97-105, 123-152; Presiding Officer's Report at 54.  
 144. *Id.* Staff Report at 153-162, 285-287, 300-309.  
 145. *Id.* at 153-162.  
 146. *Id.* at 153.  
 147. *Id.* at 153-162, 285-287, 300-309.  
 148. *Id.* at 305-309. The Commission does not question the desirability of these federal assistance programs. Rather, the Commission is concerned with the manner in which these programs have been abused through various marketing mechanisms.  
 149. Of course, drop-out rates vary greatly within the industry; the home study sector as a whole experiences higher drop-out rates than does the residence school segment, and the drop-out rates of certain occupational programs and individual schools are far lower than the statistics for the industry as a whole would reflect. See Staff Report at 169-173; Presiding Officer's Report at 139-140.  
 150. See section B(6)(a), *infra*.  
 151. Submission to accompany testimony of J. O. Brown, President, NHSC, Exhibit L-131.  
 152. See Staff Report at 173.  
 153. Statistics cited in Report to Accompany S. 2161, Vietnam Era Veterans Readjustment Assistance Act of 1972, Report No. 92-988 (July 26, 1972), pp. 54-55, Exhibit B-4. It should be noted that these figures do not include non-starts—students who are obligated for a registration or similar fee but who have not yet completed a lesson or attended a class.  
 154. *Id.* Staff Report at 174-175.  
 155. *Id.* at 175.  
 156. *Id.* at 176-180.  
 157. *Id.* at 181.  
 158. *Id.* at 181-182.  
 159. See Staff Report at 182-183; Presiding Officer's Report at 145.  
 160. See Staff Report at 184, 404-417.  
 161. See Staff Report at 184, 404-417; Presiding Officer's Report at 145-146.  
 162. See Staff Report at 185-187.  
 163. See section B(1)(d), *supra*.  
 164. See Staff Report at 188-190.  
 165. 38 U.S.C., § 1776, 1786.  
 166. HEW, USOE, "Federal, State and Private Programs of Low Interest Loans to Students in Institutions of Higher Learning," 40 Fed. 7586 (Feb. 20, 1975), 45 CFR, § 177.63(a). See Staff Report at 191-192.  
 167. See Staff Report at 193-196.  
 168. *Id.* at 196-197.  
 169. *Id.* at 197-199.  
 170. *Id.* at 199-200.  
 171. HEW, Region IV, Audit Report—Alverson-Draughton Business College, Birmingham, Ala. (Dec. 31, 1974), Exhibit H-193; HEW, Region IV, "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Exhibit H-201. Subsequent to these findings, Congress enacted the Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081 (1976), containing provisions regarding student consumer information services and authorizing the Commissioner of Education to suspend or terminate the eligibility status of any institution found to have engaged in substantial mis-

representation of the nature of its educational program, its financial charges, or the employability of its graduates. A representative of the Office of Education testified before the Commission that USOE is presently drafting regulations and implementing others addressed to these problems and is undertaking an effort to assist states in strengthening their own legal approval processes. (Testimony of John R. Proffitt, Office of Education, HEW, on January 12, 1978 at 127-130.)  
 172. See Staff Report at 200-207, 454-470.  
 173. *Id.* at 470-474. The Commission wishes to make it clear that it is not finding that adherence to the refund standards employed by the major accrediting associations, and by the Veterans Administration pursuant to 38 U.S.C. 1776(c), constitute unfair acts or practices within the meaning of Section 5 of the FTC Act. The Commission is concerned that these standards are not sufficient to dissuade schools from the unfair and deceptive practices identified in the record.  
 174. *Id.* at 210.  
 175. See section B(3)(a), *supra*; Staff Report at 211-212.  
 176. See Staff Report at 214.  
 177. *Id.* at 214, 257, 280-315.  
 178. *Id.* at 215-217.  
 179. *Id.* at 217-222.  
 180. Wellford W. Wilms, "The Effectiveness of Public and Proprietary Occupational Training," Center for Research and Development in Higher Education, University of California, Berkeley (Oct. 31, 1974), Exhibit C-110; See Staff Report at 217-219.  
 181. See Staff Report at 220-222.  
 182. See section B(5), *supra*.  
 183. See Staff Report at 208-209, 217-222.  
 184. *Id.* at 229-240.  
 185. *Id.* at 240-244.  
 186. *Id.* at 245.  
 187. *Id.* at 245-247.  
 188. *Id.* at 223-247.  
 189. *Id.* at 229.  
 190. *Id.* at 217, 229, 506-509.  
 191. *Id.* at 258a-334.  
 192. *Id.* at 259-276, 511-512.  
 193. *Id.* at 259-260.  
 194. *Id.* at 259, 511-512.  
 195. *Id.* at 184-186, 260-263, 512.  
 196. *Id.* at 259, 512.  
 197. *Id.* at 264-274.  
 198. *Id.* at 267-271.  
 199. *Id.* at 269-274.  
 200. See section B(3) and (4), *supra*.  
 201. See Staff Report at 274-276, 512-513.  
 202. *Id.* at 276-280, 291-294.  
 203. 38 U.S.C. § 1653(a), 1978; 20 U.S.C. § 1141.  
 204. See Staff Report at 513.  
 205. *Id.* at 513.  
 206. *Id.* at 282-283, 288-291.  
 207. *Id.* at 295-297.  
 208. *Id.* at 301, 308-311, 514.  
 209. See section B(4)(b), *supra*.  
 210. See Staff Report at 153-162, 276-277, 283-287, 291-295, 297-309.  
 211. *Id.* at 157, 286, 300-309, 509-510. Clearly, Congress' decision to impose a fifty percent placement requirement upon schools who wish to receive VA money has mitigated this effect to some extent.  
 212. *Id.* at 290, 311.  
 213. *Id.* at 288-291, 311-315, 514-516. See also Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081 (1976); Veterans Education and Employment Act of 1976, Pub. L. No. 94-502, 90 Stat. 2383 (1976); note 171 *supra*. While more recent legislation

does serve to strengthen Federally-assisted programs, it does not encompass the universe of schools covered by this rule. As already indicated above, the Commission does not believe that improved performance by state and private accrediting agencies, even if achieved, is sufficient to provide the scope of relief included in this rule since these agencies are not readily equipped to prevent unfair and deceptive practices.  
 213a. Testimony of Andrew H. Thornton, U.S. Veterans' Administration, January 12, 1978, at 42-44.  
 214. See Staff Report at 315-322.  
 215. *Id.* at 320-321.  
 216. *Id.* at 318-326, 516.  
 217. See, e.g., post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 13; post-record comment of LaSalle Extension University, Exhibit Q-58 at 40-45, 79-81, 98-106, 145-50; and post-record comment of National Home Study Council, Exhibit Q-79 at 30-33.  
 218. *Id.*; see also Staff Report, Part I, section IV(D).  
 219. 16 C.F.R. Part 234.  
 220. Nationwide Training Service, Docket C-2814; American Tractor Trailer Training School, Docket D-9025; Career Academy, C-2546; Commercial Programming Unlimited, Docket D-9029; Diesel Truck Driver Training School, Docket C-2759; Driver Training Institute, Docket D-9060; Electronic Computer Programming Institute, Docket D-8952; Lear Siegler, Inc., Docket D-8953; Fuqua Industries, Docket D-2626; Control Data Corp., Docket D-8940; Lafayette Academy, Docket D-8963; LaSalle Extension University, Docket D-5907; MTI Business Schools of Sacramento, Docket C-2500; Nationwide Heavy Equipment Training Service, Docket C-2759; New England Tractor Trailer Training, Docket D-9026; New York School of Computer Technology, Docket D-9029; Tri-State Driver Training, File No. 732-3409; Weaver Airline Personnel School, Docket C-2638; Worldwide Systems, Exhibit C-2683; Jetma Technical Institute, Docket D-9061; Bell & Howell, Docket D-9099; LaSalle Extension University, Docket D-9110.  
 221. See discussion under section c(4)(c) *infra*.  
 222. Section 438.1(e) of the rule.  
 223. See, e.g., post-record comment of AICS, Exhibit Q-15 at 92-98; post record comment of NHSC, Exhibit Q-79 at 71-74, 134-35.  
 224. *Id.*  
 225. See, e.g., post-record comment of Montana Auto College, Exhibit Q-74 at 1; post-record comment of National Home Study Council, Exhibit Q-79; post-record comment of Ohio School of Broadcast Technique, Exhibit Q-82 at 1.  
 226. See Staff Report, Part II, section VI(C) at 522-25.  
 227. Indeed, elimination of abuses in the private sector may serve to reduce the incentive of public schools to copy those practices.  
 228. 16 C.F.R. Part 429.  
 229. The definition of "Consumer Goods or Services" which are covered by the rule, includes courses of training or instruction. 16 C.F.R. 429 note 1 b.  
 230. Section B(4)(a)(3), *supra*.  
 231. See, e.g., of B. Craig, Assistant Attorney General, State of Wisconsin, Tr. 7053; Testimony of B. Ehrlich, Legal Counsel to NHSC and NATTS, Tr. 9392.  
 232. International Correspondence Schools, sales training materials, "10

Golden Selling Rules," Exhibit E-24. Other examples of this practice are found in the Staff Report, Part I, section VI(C) at 151-52.  
 233. See section B(4)(a)(3), *supra*.  
 234. See Presiding Officer's Report at 166.  
 235. See section 438.2(d) of the recommended final rule found at page 346 of the Staff Report.  
 236. 38 U.S.C.A. § 1786(b).  
 237. See, e.g., post-record comments of Columbia School of Broadcasting, Exhibit Q-31 at 3; post-record comment of Control Data Institute, Exhibit Q-33 at 12; post-record comment of LaSalle Extension University, Exhibit Q-58 at 145-46, 153-54.  
 238. See, e.g., post-record comment of ITT Educational Services, Exhibit Q-50 at 17; post-record comment of Penn Technical Institute, Exhibit Q-88; post-record comment of Rhode Island Association of Career and Technical Schools, Exhibit Q-95 at 3-4.  
 239. See section 438.2(c) of the rule.  
 240. The notice of cooling-off rights contained in Sections 438.5 and 438.6 require such a notification.  
 241. In the disclosure of cooling-off rights which is mailed to the student pursuant to Section 438.6 of the rule, the school must insert the expiration date of the cooling-off period.  
 242. Section 438.5 of the Rule.  
 243. See section B(4)(a)(2), *supra*.  
 244. *Supra*, note 237.  
 245. 38 U.S.C.A. § 1786(b) and implementing regulations.  
 246. See, e.g., post-record comment of NHSC, Exhibit Q-79 at 108-109; post-record comment of Rhode Island Association of Career and Technical Schools, Exhibit Q-95 at 3.  
 247. See section C(9), *infra*.  
 248. See section B(5), *supra*.  
 249. *Id.*  
 250. *Id.*  
 251. See section B(7), *supra*.  
 252. See section B(4)(a)(3), *supra*.  
 253. See section B(4)(a)(2), *supra*.  
 254. It is well established that an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act can arise from the silence of the advertiser as well as from affirmative representations. See, e.g., Fisher & DeRitis, 49 FTC 77 (1952); Stupell Enterprises, Inc. 67 FTC 173 (1965); Bantam Books, Inc. v. FTC, 275 F.2d 680 (2nd Cir. 1960), *cert. denied*, 364 U.S. 819 (1960); Kerm v. FTC, 265 F.2d 246 (10th Cir. 1959) *cert. denied*, *sub. nom.* Double Eagle Refining Co. v. FTC, 361 U.S. 818 (1959). The school need not have taken any affirmative action to create consumer misbeliefs: a violation of law may result from an advertiser or salesman's silence about a material fact concerning which consumers may make erroneous assumptions. Silence that unfairly harms the economic interests of consumers has with some frequency been the subject of other Federal Trade Commission Rules: The Failure to Post Minimum Research Octane Numbers on Gasoline Dispensing Pumps Constitutes an Unfair Trade Practice and an Unfair Method of Competition, 36 Fed. Reg. 23871 (1971); effective date stayed and plaintiff's motion for summary judgment granted in suit questioning FTC authority to promulgate TRR's National Petroleum Refiners Association v. FTC 340 F. Supp. 1343 (DDC 1972); *reversed and remanded*, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974); Trade Regulation Rule, Care Labeling of Textile Wearing apparel, 36 Fed. Reg. 2388 (1972);



Trade Regulation Rule Relating to Incandescent Lamps, 35 Fed. Reg. 11784 (1971); Trade Regulation Rule, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324 (1964). These rules were adopted to prevent unfairness due to the absence of information about the nature of the product. The Octane Rule, for example, found that consumers needed essential product information: In this instance, consumers faced a great variety of grades and brands of gasoline, and, absent octane disclosures, they could neither relate gasoline varieties to their automobile requirements so as to avoid engine damage, nor price-shop for gasoline. Lacking octane information, consumers often purchased gasoline of higher expense and octane quality than their automobile required. Again, the Commission found that under the circumstances, failure to disclose octane values was an unfair trade practice and so ordered their disclosure. See also Manco Watch Strap Co., Inc., 60 FTC 495 (1962); and Mohawk Refining Corp., 54 FTC 1071, 1077 (1958): "The appeal also contends that no power is conferred under the Act to require revealing statements in cases of non-disclosure unless the challenged practice also is accompanied by false statements of affirmative misrepresentation pertaining to the articles offered. This legal concept is erroneous. The Commission has plenary power to require affirmative disclosure of material facts in situations where seller silence results in deception of purchasers." *Id.*, Mohawk Refining Corp. v. FTC, 263 F.2d 818, 820 (3d Cir. 1959), *cert. denied*, 361 U.S. 814 (1959).

255. See section B2 *supra*.  
256. See, e.g., post-record comment of Columbia School of Broadcasting, Exhibit Q-31 at 2; post-record comment of NATTS, Exhibit Q-77 at 46-7.  
257. See, e.g., post-record comment of Missouri Association of Private Career Schools, Exhibit Q-73 at 1; post-record comment of Montana Auto College, Exhibit Q-74 at 3; and post-record comment of The Plaza School, Exhibit Q-90 at 1.  
258. Presiding Officer's Report at 123.  
259. See, e.g., post-record comment of AICS, Exhibit Q-15 at 52; post-record comment of Control Data Institute, Exhibit Q-33 at 9.  
260. See section 438.3(a)(5) of the rule.  
261. 45 CFR §§ 100-196.  
262. 45 CFR § 177.64.  
263. 45 CFR § 177.71.  
264. B5(b) *supra*.  
265. See section B2(b) *supra*.  
266. See sections B1 and B3(a) *supra*.  
267. See section B7 *supra*.  
268. *Id.*  
269. See sections B3(a) and B7 *supra*.  
270. See section B3(a)1 *supra*.  
271. See section B3(a)2 *supra*.  
272. *Id.*  
273. See footnote 254 *supra*.  
274. Pfizer Inc. 81 FTC 23 (1972).  
275. *Id.* at 64.  
276. Section 438.3(b) of the rule.  
277. *Id.*  
278. See, e.g., post-record comments of ITT Educational Services, Inc., Exhibit Q-50 at 9-10; post-record comment of Mandl School for Medical and Dental Assistants, Exhibit Q-65 at 4.  
279. See, e.g., post-record comment of NHSC, Exhibit Q-79 at 57-60, 125-26.

280. See Appendices A-C of the rule. In his report the Presiding Officer noted both the desirability of permitting some leeway in this area as well as the potential for abuse. Presiding Officer's Report at 105.  
281. See, e.g., post-record comment of AICS, Exhibit Q-15 at 38.  
282. See, e.g., post-record comment of AICS, NATTS and NHSC, Exhibit Q-16 at 9.  
283. See, e.g., post-record comment of Control Data Institute, Exhibit Q-33 at 5-6.  
284. Section 438.7(a) of the rule.  
285. 16 C.F.R. section 456.5.  
286. Virginia Pharmacy Board v. Virginia Consumer Council 425 U.S. 748 (1976); Bates v. State Bar of Arizona 433 U.S. 350 (1977).  
287. Virginia Pharmacy Board v. Virginia Consumer Council 425 U.S. 748, 771-772 and n. 24 (1976).  
288. *Id.*  
289. See, e.g., post-record comment of AICS, Exhibit Q-15 at 33-34.  
290. See, e.g., post-record comment of Consumer Federation of America, Exhibit Q-127 at 22.  
291. Commission decisions have held that it is an unfair and deceptive act or practice violating Section 5 of the Federal Trade Commission Act to make an advertising representation without adequate substantiation at the time the claim is first disseminated. See Pedders Corporation, 85 FTC 38, (1975); Firestone Tire and Rubber Co., 81 FTC 398 (1972), *aff'd*, 481 F.2d 246 (6th Cir. 1973), *cert. denied* 414 U.S. 1112 (1973); Pfizer, Inc. 81 FTC 23 (1972). In Pfizer, the Commission concluded that "the making of an affirmative product claim in advertising is unfair to consumers unless there is a reasonable basis for making the claim."  
292. See Section B3(a), *supra*.  
293. The requirement that a school have in its possession at the time it makes a representation, substantiating material which constitutes a reasonable basis for the claim derives from the Commission opinion in Pfizer, *supra*. The Commission in Pfizer indicated that the materials constituting the reasonable basis must exist before the time the representation is made. See 81 FTC at 64.  
294. See Section 18(a)(1)(B).  
295. The Commission's cooling-off rule is found at 16 C.F.R. Part 429.  
296. See section B4(a)(2), *supra*.  
297. *Id.*  
298. See section B4(a)(1), *supra*.  
299. See section (b)(a)(1), *supra*.  
300. *Id.*  
301. See section B3(b)(1), *supra*.  
302. See section B4(a), *supra*.  
303. See section B3(b)(1), *supra*.  
304. See section B3(b)(2) and B4(a)(2), *supra*.  
305. This approach is by no means novel. In Arthur Murray Studio of Washington v. FTC, 78 FTC 434 (1971), *aff'd*, 458 F.2d 622 (5th Cir. 1972), a Commission order limiting consumers' contractual obligations to a seller to \$1500 was upheld. The Commission had found "intense, emotional and unrelenting sales pressure to persuade a prospect or student to sign a long-term contract and that such a person is insistently urged, caajoled, and coerced to sign a contract hurriedly and precipitatedly through use of persistent and emotionally forceful sales presentations which are often of several hours' duration." *Id.* at 439. The Commission justified the remedy of limiting the contractual obligation stating: "The greater

the gains or rewards respondents will reap, the greater their incentive will be to engage in these practices or to devise more elaborate methods to accomplish the desired end."

306. See, e.g., post-record comment of LaSalle Extension University, Exhibit Q-58 at 155.  
307. See Veterans Administration Interpretation, Exhibit R-1.  
308. *Id.*  
309. See, e.g., post-record comment of International Correspondence Schools, Exhibit Q-49 at 4; post-record comment of TMI Communications, Inc., Exhibit Q-104.  
310. See, e.g., post-record comment of Columbia School of Broadcasting, Exhibit Q-31 at 4; post-record comment of Nat'l Association of Cosmetology Schools, Exhibit Q-76 at 4.  
311. See, e.g., post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 9.  
312. Presiding Officer's Report at section VI.  
313. See, e.g., post-record comment of ICS, Exhibit Q-49.  
314. See Staff Report, Part II, section IV(EX)(C).  
314a. Schools which are doing a good job of placing their graduates should have a better opportunity to attract students than at present, since employment data are not now required to be kept in any comparable fashion. Accordingly, advertising and recruitment costs may decline for some schools.  
315. See Presiding Officer's Report at 201. Of course, during the transitional period immediately following promulgation of this rule some uncertainty will exist until experience has been gained in the new regulatory environment. However, this will be only a temporary difficulty.  
316. See Section 438.4 of the rule.  
317. See, e.g., post-record comment of NATTS, Exhibit Q-77 at 19-22, 34, 41-42.  
318. The right to return equipment under the rule, and receive a pro rata refund on its cost, is not dependent upon the condition of the equipment when returned. The alternative would be to require that the student return the equipment in "usable" or "resalable" condition. Similar enforcement and interpretive problems would attend the imposition of such standards as arise in the determination of "fair market retail value."  
319. The refund policies of AICS and NHSC have no equipment exceptions. These policies and those in the states are detailed in the Staff Report, Part I, section VI(B).  
320. See section 438.4(c) of the rule.  
321. See Staff Report at 347.  
322. See, e.g., post-record comment of Automation Academy, Exhibit Q-19; post-record comment of NHSC, Exhibit Q-79 at 43-44, 86-91.  
323. See, e.g., post-record comment of A.B.C. Training Center, Exhibit Q-02 at 1; post-record comment of Advanced Career Training, Exhibit Q-04 at 3; post-record comment of AICS, Exhibit Q-15 at 82; post-record comment of NATTS, Exhibit Q-77 at 32-35.  
324. 15 U.S.C. § 2301 *et seq.*  
325. Section 111(c)(2) of Title I of the Magnuson-Moss Act.  
326. Section 109 of Title I of the Magnuson-Moss Act.  
327. See Section B(5)(a), *supra*.  
328. These practices are catalogued at sections B (4) and (5), *supra*.

329. Testimony of Bernard Ehrlich, counsel to National Association of Trade and Technical Schools and National Home Study Council, at Tr. 9392.

330. See, e.g., post-record comments of Association of Independent Colleges and Schools, Exhibit Q-15 at 22-24; post-record comment of Laurel Beauty Academy, Exhibit Q-60 at 36; and post-record comment of Southwestern Institute, Inc., Exhibit Q-99.

331. See, e.g., post-record comment of Chester Institute for Technical Education, Exhibit Q-26 at 3; post-record comment of Cleveland Institute of Electronics, Exhibit Q-29 at 6; post-record comment of Control Data Institute, Exhibit Q-33 at 6-7; post-record comment of National Association of Trade and Technical Schools, Exhibit Q-77 at 23-24; and post-record comment of San Francisco Consumer Action, Exhibit Q-160 at 36.

332. Many schools are already under an obligation to give written cooling-off notices to satisfy the existing requirements of the Commission's cooling-off rule (16 CFR Part 429). The rule will, however, impose the additional cost of postage because schools must now mail the disclosure to the student rather than delivering it at the time the student signs the enrollment contract.  
333. See Staff Report at 252-54; Presiding Officer's Report at 92. Since the placement disclosures are included in the same envelope as the cancellation notice, no additional costs will be incurred.  
334. *Id.* at Part I, Section VI(C).  
335. See Sections 438.5 and 438.6.  
336. See Appendices A-C to 16 C.F.R. Part 438.

337. E.g., post-record comment of Atlanta College of Business, Exhibit Q-18 at 2-3; post-record comment of ITT Educational Services, Inc., Exhibit Q-50 at 27-28; post-record comment of National Home Study Council, Exhibit Q-79 at 119.  
338. The rule categorizes four basic kinds of courses: correspondence courses, residence courses which have fixed-class schedules, residence courses which do not have fixed-class schedules, and combination courses. Each of these four types of courses is varied by whether the school makes a separate equipment charge for the course.  
Subchapter D of Chapter 1 of Title 16 of the Code of Federal Regulations is amended by adding Part 438 to read as follows:

Sec.  
438.0 The Rule.  
438.1 Definitions.  
438.2 Enrollment and cooling-off period.  
438.3 Disclosure of graduation and placement rates.  
438.4 Cancellation and refund procedures after cooling-off period.  
438.5 Contract notice.  
438.6 Notice to be mailed.  
438.7 Advertising disclaimers.  
438.8 Miscellaneous requirements.  
438.9 Preemptive effect of the rule.  
438.10 Effective date of the rule.

Appendices A through S.

AUTHORITY: 38 Stat 717, as amended (15 U.S.C. 41, *et seq.*).

#### § 438.0 The Rule

In connection with the sale or promotion of any course in or affecting commerce, it is an unfair or deceptive

act or practice for any school to fail to comply with the requirements set forth in §§ 438.2 through 438.8 of this Part.

#### § 438.1 Definitions

For the purposes of this Rule, the following definitions shall apply:

(a) *Prospective student.* A "prospective student" is any person who seeks to enroll in a course but does not include any person whose enrollment has been sponsored or required by a government agency, charitable organization, labor union, school (other than the school in which enrollment is being made), or the person's employer, when that agency, organization, union, school or employer has identified and selected the course to be taken.

(b) *Student.* A "student" is any person who has signed an enrollment contract with a school and not cancelled that contract before the cooling-off period specified in § 438.2 of this rule has ended.

(c) *Course.* (1) The term "course" means a residence, correspondence or combination program of study, education, training, or instruction consisting of a series of lessons, and/or classes which are coordinated, arranged, or packaged to constitute a curriculum or program of instruction and sold collectively, so long as the course purports to prepare or qualify individuals, or improve or upgrade the skills individuals need, for employment in any specific occupation, trade, or in job positions requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills.

(2) The term "course" shall not be construed to include high school equivalency courses or general self-improvement courses which do not purport to offer training necessary to obtain employment in a specific skill or trade.  
(3) The term "course" shall not be construed to include a program two years in length or longer which consists of accredited college level instruction that culminates in a standard college degree, as defined in 38 U.S.C. 1652(g), as amended.

(4) The term "course" shall not be construed to include any course whose total contract price is less than one hundred dollars (\$100), provided that the student has not enrolled in any other course with that school during the calendar year and that the school does not offer any other "course" as defined by this paragraph, for one hundred dollars (\$100) or more.

(d) *Total contract price.* The "total contract price" is the total price paid or to be paid by the student for the property or services which are the subject of the enrollment contract, including charges for registration, ancillary

services and any finance charges determined in accordance with the Federal Reserve Board's Regulation Z (12 CFR 226.4). Any equipment which the school provides to the student must be included within the total contract price unless the school discloses in the enrollment contract and the notice required by § 438.6 of this rule, the price being charged for the equipment. If the equipment is provided at different points in time during the duration of the contract, the amount being charged for each installment of equipment must be disclosed in the enrollment contract.

(e) *School.* A "school" is any person, partnership or corporation engaged in the operation of a privately owned school, studio, institute, office or other facility which offers residence, correspondence or combination courses.

(f) *Graduate.* A "graduate" is any student who fully completes all of the lessons or classes required by the school and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.

(g) *Fail to complete.* Any student who does not fully complete all of the lessons or classes required by the school as constituting the full course of study and who cancels by any of the methods prescribed in § 438.4(a) of the Rule shall be deemed to have "failed to complete" his or her course.

(h) *Actively enrolled.* Any student who is neither a graduate nor has failed to complete his or her course of study shall be deemed to be "actively enrolled."

(i) *Base period.* A "base period" is a six-month period from January 1 through June 30, or from July 1 through December 31.

(j) *Most recent base period.* The "most recent base period" is the latest base period, not including any base period that ended within six months of the time the disclosures are required to be made pursuant to § 438.3(a) of this Rule.

(k) *Most recent graduating class.* The "most recent graduating class" is the class of graduates which most recently completed its course, but does not include any graduating class which completed its course within six months of the time the disclosures required by § 438.3(b)(1) are to be made.

(l) *New Course.* A "new course" is any course which has substantially different course content and occupational objectives from any course previously offered by the school and which has been offered for a period of time less than six (6) months since:

(1) the graduation of one class or the completion of one base period, whichever is later, if a residence course; or



(2) the completion of two (2) base periods, if a correspondence school course.

All courses offered by new schools, which otherwise meet the requirements of paragraph (1) (1) or (2) of this section shall be considered to be new courses.

(m) *Combination course.* A "combination course" is any course that consists of both correspondence lessons and residence classes.

(n) *Constructive notice.* A student shall be deemed to have provided "constructive notice" of his or her intention to withdraw from a course:

(1) For residence courses with fixed class schedules or the equivalent portion of a combination course, by failing to attend residence instructional facilities for a period of five consecutive days on which that class meets;

(2) For residence courses without fixed class schedules, or the equivalent portion of a combination course, by failing to attend residence classes or failing to utilize residence instructional facilities for a period of sixty (60) consecutive days;

(3) For correspondence courses of instruction, or the equivalent portion of combination course, by failing to submit a lesson for a period of 120 consecutive days.

(o) *Course with/without a fixed class schedule.* A "course without a fixed class schedule" is a residence course which does not have precise dates for class admissions, where enrollees do not attend classes by a prearranged schedule, or where there is not a precise graduation date and in which the financial obligation of enrolled students is determined by the number of lessons they have actually attended. Any other residence course shall be deemed to be a "course with a fixed class schedule."

(p) *Enrollment contract.* An "enrollment contract" is any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school, provided that the agreement or instrument is entered into after the effective date of this trade regulation rule.

(q) *Job or earnings claim.* A "job or earnings claim" is any general or specific job or earnings claim.

(r) *General job or earnings claim.* A "general job or earnings claim" is any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.

(s) *Specific job or earnings claim.* A "specific job or earnings claim" is any express claim or representation concerning the employment opportunities

available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.

(t) *Media advertisement.* A "media advertisement" is any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are mailed by a school or distributed by its sales representatives.

(u) *Equipment.* The term "equipment" includes any tools or other devices delivered to the student for use in the course but does not include records, tapes, slides, film, books, or any other written course materials.

#### § 438.2 Enrollment and Cooling-Off Period.

(a) The school must give the prospective student a completed copy of the enrollment contract at the time the prospective student signs the contract or upon the school's receipt of an enrollment contract completed entirely by mail. The enrollment contract must be written in the same language as the oral sales presentation, if any, made by the school and must contain the name and address of the school.

(b) The school must place on the enrollment contract the explanation of the prospective student's cooling-off rights contained in the notice entitled "CANCELLING THIS CONTRACT" required by § 438.5 of this rule. If the school does not place the "CANCELLING THIS CONTRACT" notice on the front page of the enrollment contract, the school must place on the front page the following notice: "An explanation of your cancellation and refund rights is on page of this contract." This notice must be printed in boldface type.

(c) After the school has accepted the enrollment contract of the prospective student, the school must mail to the prospective student the disclosure of the school's graduation rate, and placement rate if applicable, required by § 438.3 of this rule. In the same envelope used to mail that notice to the prospective student, the school must also mail to the prospective student, on a separate sheet of paper, the notice entitled "HOW TO CANCEL THIS CONTRACT" required by § 438.6 of this rule.

(d) If a prospective student cancels the enrollment contract during the period described in the notices required by § 438.5 and § 438.6 the school must refund all payments made by the prospective student and cancel and return any evidence of indebtedness within fourteen days after receiving any notice of cancellation. If a school fails to comply with § 438.5 and § 438.6,

it shall not retain any money or evidence of indebtedness from a prospective student for that course.

(e) If a residence school provides a prospective student with equipment during the cooling-off period, it must disclose the amount being charged for that equipment in the notice of cooling-off rights required by § 438.5 and § 438.6 of the rule. If the prospective student cancels his or her enrollment contract during the cooling-off period, and returns the equipment to the school within twenty (20) days from the date of cancellation, no charge may be made by the school for the equipment. If, however, the student fails to return the equipment within the twenty (20) day period, the school may retain the amount disclosed.

Any equipment provided to a student by a correspondence school during the cooling-off period, may be retained by the student without charge if the student cancels during the cooling-off period.

#### § 438.3 Disclosure of graduation and placement rates.

(a) On the Disclosure Form entitled "How Our Students Are Doing", described by paragraph (e) of this Section, a school shall disclose its graduation rate for the course that is the subject of the enrollment contract in the following manner:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

- (i) the number of students;
- (ii) the number and percentage of students who graduated;
- (iii) the number and percentage of students who failed to complete;

*Provided that, if a course has more than one graduating class during its most recent base period (as defined in § 438.1(j)), the school may disclose its graduation rate in accordance with paragraph (a)(2).*

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods or most recent base period if individuals only became students during that period:

- (i) the number of students;
- (ii) the number and percentage of those students who graduated;
- (iii) the number and percentage of those students who failed to complete during that time;
- (iv) the number and percentage of those students who remained actively enrolled at the end of that time.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods, or most

recent two or three base periods if individuals only became students during those periods:

- (i) the number of students;
- (ii) the number and percentage of those students who graduated;
- (iii) the number and percentage of those students who failed to complete during that time;
- (iv) the number and percentage of those students who remained actively enrolled at the end of that time.

(4) For new courses (as defined in § 438.1(i)), the school shall make the following disclosure:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or state employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience.

*Provided, however, that a new course with respect to which no general job or earnings claim is made may make the following disclosure:*

Since this course is new, we are not able to give you information on the graduation rate of our students.

(5) A school may, at its option, include the following statement on the Disclosure Form in the manner shown on Appendices A-C.

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons.

(b) If a school makes a job or earnings claim for a course other than a new course, the school shall disclose the following placement information on the Disclosure Form entitled "How Our Students Are Doing," described by paragraph (e) of this section for each course that is the subject of the enrollment contract:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

- (i) the number and percentage of graduates who obtained employment in jobs for which the course prepared them within four months of leaving the course;
- (ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);
- (iii) the number and percentage of these graduates who refused to provide salary information.

*Provided that, if a course has more than one graduating class during its most recent base period (as defined in*

§ 438.1(j)), the school may disclose its placement rate in accordance with paragraph (b)(2).

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods, or most recent base period if individuals only became students during that period:

- (i) the number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;
- (ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);
- (iii) the number and percentage of these graduates who refused to provide salary information.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods or most recent two or three base periods if individuals only became students during those periods:

- (i) the number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;
- (ii) the number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);
- (iii) the number and percentage of these graduates who refused to provide salary information.

(4) A school may, at its option, include the following statement on the Disclosure Form in the manner shown in Appendices A-C:

In evaluating our record, remember not all of our students took this course to get a job in the field of [school to insert area of training]. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

(c) The disclosure specified by paragraph (b) of this section must be based on the school's actual knowledge of its students' experiences. Actual knowledge shall be verified, at a minimum, by a list that includes the following information for each student who is counted as obtaining employment in a job for which the course prepared him or her:

- (1) the student's name and address (or telephone number);
- (2) the employer's name;
- (3) the name or title of the job obtained;
- (4) information that indicates that the job was obtained within four (4) months of leaving the course; and

(5) the student's annual gross salary expressed in increments of two thousand dollars (\$2,000), or an indication of the student's refusal to provide such salary information.

(d) No school shall make any specific job or earnings claim for a new course.

(e) The information required or permitted to be disclosed under paragraphs (a) and (b) of this section shall be contained in a Disclosure Form entitled "How Our Students Are Doing." The Disclosure Form shall contain no other information or representations. The name of the school and the course shall appear at the top of form, immediately below the title of the form. The format of this notice must conform to the examples set forth in Appendices A-C, including the same capitalization and underlining of words. This form must be mailed to all prospective students who have signed enrollment contracts. It must be mailed in the same envelope as the notice explaining the prospective student's cancellation, cooling-off and refund rights required by § 438.6 of this rule. No other materials may be included in that envelope.

(f) If a school makes a general job or earnings claim or a specific job or earnings claim that is not substantiated by the Disclosure Form required by paragraph (e) above, the school must possess a reasonable basis for each such claim at all times that the claim is made and the school must not know or have reason to know of facts which would make the claim inapplicable to the school, its enrollees or a particular geographical area served by the school. A "reasonable basis" shall consist of a statistically valid and reliable survey which substantiates the claim.

(1) Nothing in paragraph (f) above shall be construed as prohibiting schools from making jobs or earnings claims which are substantiated by projections from the "Occupational Outlook Handbook" published by the Bureau of Labor Statistics or by similar projections published by other federal or state agencies. However, when such claims are contained in non-media advertising, the schools must clearly and conspicuously disclose in immediate conjunction with the claim, any limitations, restrictions or caveats accompanying or made applicable to those projections in their original source.

(2) A school shall maintain records adequate to disclose the facts upon which each claim covered by this paragraph is based. Such records shall be maintained for three years from the date the claim is made, and, after compliance with any applicable federal law concerning the privacy or confidentiality of student records, shall be made available for inspection and copying by Federal Trade Commission



officials upon reasonable notice and during regular business hours.

#### § 438.4 Cancellation and Refund Procedures After Cooling-Off Period.

(a) After the cooling-off period provided for in § 438.2 has ended, a student may cancel his or her enrollment in the course by written notification to the school. Cancellation by the student is effective on the date the student mails or delivers written notification to the school or on the date that the student gives the school constructive notice (as defined in § 438.1(n)) of his or her intention to withdraw from the course.

(b) If a student gives the school written notice of his or her intention to remain enrolled in a course, the time period for measuring constructive notice will begin anew from the date of the written notice. Any previous cancellation by virtue of the student's constructive notice will not be effective if the student provides this written notice of his or her intention to remain enrolled.

(c) If a student cancels his or her enrollment contract after the cooling-off period, the school shall not receive, demand, or retain more than a pro rata portion of the total contract price plus a registration fee in the amount of \$25 or 10% of the total contract price (not to exceed \$75) whichever is greater. This total obligation shall not be more than the total contract price. The pro rata portion shall be calculated in the following manner:

(1) Courses for which the school does not make any separate equipment charge:

(i) the school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation;

(ii) this number must be divided by the total number of classes, hours or lessons required to complete the course; and

(iii) the resulting number shall be multiplied by the total contract price.

(2) Courses for which the school does make a separate equipment charge:

(i) the school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation;

(ii) this number must be divided by the total number of classes, hours or

lessons required to complete the course; and

(iii) if a student returns to the school within 21 days of withdrawing from a course all of the equipment provided by the school, the school must add the cost of this equipment (as disclosed in § 438.1(d)) to the total contract price. This figure should then be multiplied by the figure calculated in paragraph (2)(ii) above.

If the student does not return the equipment within 21 days to the school, the school may retain the full amount of the equipment charge plus the pro rata portion of the total contract price.

(3) For combination courses, the school must designate separate prices for the residence and correspondence portions of the course in the enrollment contract, and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the residence portion and the correspondence portion.

(d) If a school had not made a separate charge for equipment, the school must within twenty-one (21) days of the date of cancellation provide the student with the correct refund payment, if any, or must cancel that portion of the student's indebtedness that exceeds the amount due to the school. However, if a school had made a separate charge for equipment provided to the student and the student has cancelled by constructive notice (see § 438.1(n) for a definition of this term) the school must send the following notice to the student:

Dear \_\_\_\_\_: Our records show that you have not [submitted lessons] [attended classes] for [school insert (120) for correspondence courses, (5) for residence courses with fixed class schedules or (60) for residence courses without fixed schedules] consecutive days, so we have canceled your contract. If you want to stay in this course fill in the information at the bottom of this letter and return it to us.

If you decide to cancel this contract with us, you can keep the equipment we sent you or return it to us. If you keep this equipment, you will owe us the total cost. This comes to \_\_\_\_\_. Here is how we figured this amount:

| Description of Equipment | Delivery Date                 | Cost    |
|--------------------------|-------------------------------|---------|
| Ohmmeter.....            | (Date or installment number). | \$32.10 |

If you decide to return this equipment, you will receive a partial refund of the cost based on the percentage of the course you completed before you dropped out. But to get this refund, you must return this equipment to us within twenty-one (21) days from the date of this letter. Send this equipment to the following address:

Before making a decision on whether or not to return this equipment, you should review the section of your contract that explains how we settle your account.

School \_\_\_\_\_  
Address \_\_\_\_\_  
Dear Sirs: I want to continue taking this course. Please do not cancel my contract.

\_\_\_\_\_  
Date \_\_\_\_\_  
\_\_\_\_\_  
Student's Signature \_\_\_\_\_

In the event that a school has made a separate charge for equipment, the school must provide the student with the correct refund payment, or cancel the excess indebtedness, within 42 days from the date it mails the above notice to the student.

#### § 438.5 Contract notice.

(a) The school must include in the enrollment contract the following notice. The same method of capitalization and underlining of words used in the notices set forth below must be used by the school. All subtitles in the notices must be in boldface type. The title of the notice "CANCELLING THIS CONTRACT" must be in all capitals with boldface type.

(1) For correspondence courses without a separate equipment charge, the notice set forth in Appendix D;

(2) For correspondence courses with a separate equipment charge, the notice set forth in Appendix E;

(3) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix F;

(4) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix G;

(5) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix H;

(6) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix I;

(7) For combination courses without a separate equipment charge, the notice set forth in Appendix J; and

(8) For combination courses with a separate equipment charge, the notice set forth in Appendix K.

(b) If a residence school has classes of varying length and calculates its students' financial obligations on an hourly basis the school must substitute the word "hour" for the word "class" in the notices required by paragraphs (a)(3) through (a)(8).

#### § 438.6 Notice to be mailed.

The school must mail to the prospective student the following notice after the school has accepted the enrollment contract of the prospective student. The same method of capitalization and underlining of words used in notices set forth below must be used by the school. All subtitles in the notice must be in boldface type. The

title of the notice "HOW TO CANCEL YOUR CONTRACT" shall be in all capitals with boldface type.

(a) For correspondence courses without a separate equipment charge, the notice set forth in Appendix L;

(b) For correspondence courses with a separate equipment charge, the notice set forth in Appendix M;

(c) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix N;

(d) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix O;

(e) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix P;

(f) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix Q;

(g) For combination courses without a separate equipment charge, the notice set forth in Appendix R;

(h) For combination courses with a separate equipment charge, the notice set forth in Appendix S.

#### § 438.7 Advertising Disclaimers

(a) If a school makes any job or earnings claims for any course in a media advertisement, the school must include the following disclaimer in this advertisement:

Graduation from this course does not insure that you will get a job. To find out how our graduates have done, send for our job placement record.

(b) If a school makes any written job or earnings claims about any course, other than a media advertisement, the school must include in that document full disclosures of the school's graduation and placement rates require by Section 438.3 (a) and (b).

(c) If a school makes any general job or earnings claims for a new course, that school must make the following disclosure in lieu of those required in paragraphs (a) and (b):

(1) in media advertisements:

Since this course is new, we are not able to tell you about the experience of our students in getting jobs.

(2) all other, non-media, advertisements:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or state employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience.

#### § 438.8 Miscellaneous requirements.

(a) The school may not include in the enrollment contract or any other document a waiver of any of the rights or obligations created by this rule. No oral waiver of any of these rights or obligations shall be effective.

(b) The notices and disclosures required by § 438.5 and § 438.6 must be written in a least 10-point type, and except as indicated in the Appendices required by those sections, must not be in all capital letters. The notices must be written in the same language as the oral sales presentation, if any, made by the school.

#### § 438.9 Preemptive effect of the rule

This trade regulation rule preempts any provision of any state law, rule, or regulation which is inconsistent with or otherwise frustrates the purpose of the provisions of this trade regulation rule, except where the Commission has exempted such a state or local law, rule or regulation. If, upon, application of any appropriate state or local governmental agency, the Commission determines that the state statutory or regulatory provision affords greater protection to students than the comparable provision of the Commission's rule then the state requirement will be applicable to the extent specified in the Commission's determination on the exemption application. Any exemption application filed under this section should address the following factors:

(a) the substantive protection offered by the comparable state provision;

(b) the readability of the consumer notices used to explain to the student or prospective student his or her rights under the provision (where applicable);

(c) the availability of self-help remedies to the student or prospective student to enforce his or her rights (e.g., the existence of contractual rights through mandated contractual language); and

(d) the forms of relief and redress available to enforce the state provision.

Any Commission decision to grant an exemption request from a state or local governmental entity shall be conducted under Section 553 of title 5, United States Code.

#### § 438.10 Effective date of the rule.

The effective date of the Rule will be January 1, 1980. Disclosures required by § 438.3 shall be made on the basis of base periods beginning January 1, 1979. Until such time has elapsed as to permit schools to make disclosures on the basis of the minimum number of base periods required for them under § 438.3, such disclo-

tures shall be made on the basis of the number of base periods actually completed (plus six months) during the period beginning January 1, 1979.

#### APPENDIX A

##### CORRESPONDENCE COURSE

##### How Our Students Are Doing

[School Name] \_\_\_\_\_  
Course \_\_\_\_\_

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

##### Graduation Record—From \_\_\_\_\_ To \_\_\_\_\_

|                                          |     |      |
|------------------------------------------|-----|------|
| Number of students enrolled.....         | 100 | 100% |
| 50 students graduated.....               | 50  | 50%  |
| 30 students did not finish the course... | 30  | 30%  |
| 20 students are still enrolled.....      | 20  | 20%  |

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

##### Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from \_\_\_\_\_ to \_\_\_\_\_. We found that 38 or 76% of these 50 graduates got jobs in the field of \_\_\_\_\_ within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

| Starting salary        | Number of students | Percent of total |
|------------------------|--------------------|------------------|
| \$6000-\$7999.....     | 9                  | 24               |
| \$8000-\$9999.....     | 11                 | 29               |
| \$10,000-\$11,999..... | 7                  | 18               |
| \$12,000-\$13,999..... | 9                  | 24               |
| Refused to tell.....   | 2                  | 5                |
|                        | 38                 | 100%             |

In evaluating our record, remember not all of our students took this course to get a job in the field of \_\_\_\_\_. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

#### APPENDIX B

##### RESIDENCE COURSE WITHOUT FIXED-CLASS SCHEDULES

##### How Our Students Are Doing

[School Name] \_\_\_\_\_  
Course \_\_\_\_\_

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

##### Graduation Record—From \_\_\_\_\_ To \_\_\_\_\_

|                                          |     |      |
|------------------------------------------|-----|------|
| Number of students enrolled.....         | 100 | 100% |
| 50 students graduated.....               | 50  | 50%  |
| 30 students did not finish the course... | 30  | 30%  |
| 20 students are still enrolled.....      | 20  | 20%  |



In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

#### Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from — to —. We found that 38 or 76% of these 50 graduates got jobs in the field of — within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

| Starting salary   | Number of students | Percent of total |
|-------------------|--------------------|------------------|
| \$6,000-\$7,999   | 9                  | 24               |
| \$8,000-\$9,999   | 11                 | 29               |
| \$10,000-\$11,999 | 7                  | 18               |
| \$12,000-\$13,999 | 9                  | 24               |
| Refused to tell   | 2                  | 5                |
|                   | 38                 | 100              |

In evaluating our record, remember not all of our students took this course to get a job in the field —. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

#### APPENDIX C

##### RESIDENCE COURSES WITH FIXED-CLASS SCHEDULE

#### How Our Students Are Doing

[School Name] \_\_\_\_\_  
Course —

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—For the Class Graduating on —

|                                       |     |      |
|---------------------------------------|-----|------|
| Number of students enrolled           | 100 | 100% |
| 60 students graduated                 | 60  | 60%  |
| 40 students did not finish the course | 40  | 40%  |

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

#### Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 60 students graduated from this course from — to —. We found that 38 or 63% of these 60 graduates got jobs in the field of — within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

| Starting salary   | Number of students | Percent of total |
|-------------------|--------------------|------------------|
| \$6,000-\$7,999   | 11                 | 24               |
| \$8,000-\$9,999   | 11                 | 29               |
| \$10,000-\$11,999 | 7                  | 18               |
| \$12,000-\$13,999 | 9                  | 24               |
| Refused to tell   | 2                  | 5                |
|                   | 50                 | 100%             |

In evaluating our record, remember not all of our students took this course to get a job in the field of —. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

#### APPENDIX D

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates")

##### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

##### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

##### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and add a \$— registration fee. We compare this to what you have paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the \$— course cost by the — lessons in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX E

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates")

##### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

##### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

##### Equipment

A description of the equipment we will send you and the installment charges are summarized below:

| Item          | Delivery date         | Cost    |
|---------------|-----------------------|---------|
| Ohmmeter      | 1/13/78 (or lesson —) | \$32.00 |
| Circuit board | 2/31/78 number)       | \$20.00 |

##### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us. This money will be paid within two (2) weeks from date your contract is cancelled.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based

on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — lessons in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX F

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates")

##### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

##### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign

your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX G

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How our students are doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates")

##### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

##### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Equipment

A description of the equipment we will provide you with and the charges are summarized below:

| Item          | Delivery date        | Cost    |
|---------------|----------------------|---------|
| Ohmmeter      | 1/31/78 (or class —) | \$32.00 |
| Circuit board | 2/31/78 number)      | \$20.00 |

#### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX H

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings



ings claims insert "and the placement rate of our graduates".

#### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

#### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a \$— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund we will send it to you within twenty-one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX I

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

#### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

#### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Equipment

A description of the equipment we will provide you with and the charges are summarized below:

| Item               | Delivery date           | Cost    |
|--------------------|-------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or class ..... | \$32.00 |
| Circuit board..... | 2/31/78 number) .....   | \$20.00 |

#### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will

cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX J

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

#### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

#### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period you may owe us some money. To determine the exact amount, we multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the \$— cost of the home study portion of this course by the — lessons in the part of the course. We add to this the amount you owe us for the residence portion of this course. To determine this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price for each class is figured by dividing the \$— cost for the residence portion of this course by the — classes in the course. We add to this total a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us addi-

tional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX K

##### CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

##### Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

##### How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

#### How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

#### Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

#### Equipment

A description of the equipment we will provide you with and the charges are summarized below:

| Item               | Delivery date               | Cost    |
|--------------------|-----------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or lesson or ..... | \$32.00 |
| Circuit board..... | 2/31/78 class number) ....  | \$20.00 |

#### Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2)

weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a \$— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty one (21) days from the date this contract is cancelled, we divide the \$— cost for the home study portion of this course by the — lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the \$— cost for the residence portion of this course by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a \$— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX L

##### HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on —. If you cancel this contract within this fourteen (14) day period, we will refund any money you have

paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the \$— course cost by the — lessons in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

#### APPENDIX M

##### HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on —.

#### Equipment

A description of the equipment we will send you and the charges are summarized below:

| Item               | Delivery date           | Cost    |
|--------------------|-------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or lesson..... | \$32.00 |
| Circuit board..... | 2/31/78 number).....    | \$20.00 |

#### Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — lessons in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a \$—



registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX N

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX O

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

| Item               | Delivery date           | Cost    |
|--------------------|-------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or class ..... | \$32.00 |
| Circuit board..... | 2/31/78 number) .....   | \$20.00 |

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you with for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX P

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a \$— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund we will send it to you within twenty one (21) straight days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX Q

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

| Item               | Delivery date           | Cost    |
|--------------------|-------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or class ..... | \$32.00 |
| Circuit board..... | 2/31/78 number) .....   | \$20.00 |

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you with for this course must be made available to us or you will owe us the amount shown above. We will pick up this equipment within twenty (20) days from the date the contract is cancelled. If we fail to pick up this equipment by then, you can keep it without paying for it.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will

cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX R

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the \$— cost for home study portion of this course by the — lessons in that part of the course. We add to this the amount you owe us for the residence portion of this course. To determine this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price for each class is figured by dividing the \$— cost for the residence portion of this course by the — classes in the course. We add to this total a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund, or owe us additional money. If you are entitled to a refund, we will send it to you within twenty one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity

to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

APPENDIX S

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on \_\_\_\_\_. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

Equipment

A description of the equipment we will send you and the charges are summarized below:

| Item               | Delivery date               | Cost    |
|--------------------|-----------------------------|---------|
| Ohmmeter.....      | 1/31/78 (or lesson or ..... | \$32.00 |
| Circuit board..... | 2/31/78 class number ....   | \$20.00 |

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you

during this portion of the course. We divide this total by the — classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a \$— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty-one (21) days from the date this contract is cancelled, we divide \$— cost for the home study portion of this course by the — lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the \$— cost for the residence portion of this course by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a \$— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date \_\_\_\_\_  
Student's Signature \_\_\_\_\_

By direction of the Commission.

CAROL M. THOMAS,  
Secretary.

(FR Doc. 78-36021 Filed 12-27-78; 8:45 am)



THURSDAY, DECEMBER 28, 1978

PART VIII



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**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**Office of Assistant  
Secretary for Housing—  
Federal Housing  
Commissioner**

■

**LOW RENT HOUSING  
HOMEOWNERSHIP  
OPPORTUNITIES**

**Turnkey III Program**

Registered  
Federal Property



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENTOffice of Assistant Secretary for Housing—  
Federal Housing Commissioner

[24 CFR Part 804]

[Docket No. R-78-603]

LOW RENT HOUSING HOMEOWNERSHIP  
OPPORTUNITIES

## Turnkey III Program

AGENCY: Department of Housing  
and Urban Development.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would amend the Turnkey III Home Ownership Opportunities Program to give Public Housing Authority (PHAs) greater flexibility in the marketing of Turnkey III units and to set forth standards and procedures applicable to homebuyers. Included in the proposed rule are provisions for operating subsidies and PHA purchase money financing. The changes are designed to improve operational flexibility of the program and to improve management.

**EFFECTIVE DATE:** January 29, 1979.

**ADDRESS:** Comments and suggestions, which should include a reference to the docket number and date of publication, should be sent to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION  
CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-8460. This is not a toll-free number.

## SUPPLEMENTARY INFORMATION:

INABILITY TO MARKET TURNKEY III  
UNITS

1. Section 804.101(b)(1) would be amended to provide that where a PHA is temporarily unable to market vacant Turnkey III units to homebuyer families which meet the regular Turnkey III standards, the PHA may rent the units to families which meet the standards for admission to a public housing rental project.

AMENDMENTS WITHOUT PREJUDICE TO  
CONTRACT RIGHTS

2. Section 804.101(b)(6) would provide that a homebuyer who executed the form of Homebuyers Ownership Opportunity Agreement as required in accordance with the Turnkey III regu-

lations in effect at the time of the execution shall be entitled to all rights and privileges provided under subsequent amendments of the regulations, but that such amendments shall not be applied in derogation of any rights or privileges under the homebuyer's executed agreement. The Turnkey III regulations were first promulgated on October 9, 1973, and were once previously amended, on March 22, 1974. Section 804.101(b)(6) would give a homebuyer who executed the then required form of agreement on or after October 9, 1973, the benefits of the present amendments, as well as the amendments of March 22, 1974, but without prejudicing the homebuyer's contract rights.

## ADMISSION AND CONTINUED OCCUPANCY

3. Section 804.104(a) would specify that the PHA must adopt regulations establishing standards and procedures for the admission of Turnkey III homebuyers, including any preferences, priorities or other factors affecting admission, and that these admission regulations must be in accordance with all applicable HUD requirements.

4. Section 804.104(c)(2) would clarify the requirements for adoption, subject to HUD approval, of PHA regulations establishing schedules of maximum income limits.

5. Every family selected for admission to a Turnkey III development must meet defined standards of "potential for homeownership." The regulations would be amended (Section 804.104(f)(2)) to specify, in accordance with Section 6(c)(4)(D) of the United States Housing Act of 1937, that the standards are intended to assure that selection for the homeownership development is limited to low-income families capable of assuming the responsibilities of homeownership.

6. The regulations now provide that a PHA must select Turnkey III homebuyers whose monthly payments allow a margin (ten percent) over the minimum (referred to as "break-even") needed for maintenance and expenses. The amendment would remove the requirement for a margin over break-even. The regulation would state (Section 804.104(g)(2)) the monthly payments for the selected homebuyers shall result in average monthly payments at least equal to the break-even amount for the development.

7. The regulations would be amended to provide (Section 804.104(g)(3)) that the PHA must assure in the selection of homebuyers the achievement and maintenance of occupancy by a body of homebuyers with a broad range of incomes generally representative of the range of incomes of low-income families in the area who would

be qualified for admission to the Turnkey III development.

The PHA would also be required to avoid concentrations of the most economically deprived families in any one or all of the PHA's low-income developments; and in any project placed under ACC after September 26, 1975, to assure occupancy of at least 20 percent of the homes by homebuyers whose incomes do not exceed 50 percent of the median income of families in the area who would be qualified for admission (Section 804.104(g) (4) and (5)).

8. The regulations (Section 804.104(h)) governing continued occupancy of the homes by homebuyers who no longer require subsidy, and the definition of monthly housing cost for this purpose, would be deleted, to reflect the elimination of the statutory requirement for establishing limits for continued occupancy. However, after a homebuyer becomes eligible for PHA financing of the home purchase, the homebuyer is no longer entitled to automatic monthly reductions of the purchase price. The purchase price is frozen at the amount on the purchase price schedule when the homebuyer is notified that the financing is available (Section 804.116(a)(3)).

PROTECTION OF CHILD'S INTEREST IN  
HOME

9. The March 22, 1974 amendments of the Turnkey III regulations include a provision that where a homebuyer dies and only minor children are left as occupants of the home, the PHA may, in order to protect the children's occupancy, and opportunity to gain ownership of the home, approve as occupant an adult who has been appointed legal guardian of the children with a duty to perform the obligations of the homeownership agreement on their behalf. In response to questions which have arisen concerning these procedures, it is proposed to amend Section 804.107(1)(3) to permit a non-occupant to act as guardian of the child's interest in the home, where the child continues to live in the home with an adult to care for the child. The amendments would also provide that the income of the person who actually occupies the home to care for the child is included in the family income for purpose of determining the amount of the required monthly payment, but that the regulatory provision requiring the maintenance of homeownership potential is not applicable during the period of approved occupancy on behalf of the child. Other technical provisions would clarify the respective rights of the child, the guardian, and the person living in the home to care for the child.

## HOMEBUYER PAYMENTS

10. Section 804.102 would state that the term "family income" in the Turnkey III regulations has the same meaning as in the public housing rental regulations (Section 860.403(f)). Section 804.107(j) would be amended to state that the PHA's schedule for determining monthly payments must comply with the regulations establishing minimum and maximum rents for public housing (Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements). This amendment would confirm and clarify the applicability of these regulations to Turnkey III (see Section 860.402), but does not establish a new requirement.

11. Section 804.107(j) would also be amended to delete the reference to inclusion of the monthly allowance for utilities in the "maximum required monthly payment." The amount of the required monthly payment (contract rent) reflects a prior deduction for tenant-supplied utilities.

## HOMEBUYER ACCOUNTS

12. Section 804.108(c) would be amended to state, as originally intended, that where a homebuyer's monthly payment is less than the amount needed for the accounts for routine and nonroutine maintenance (Earned Home Payments Account and Nonroutine Maintenance Reserve), the deficiency is supplied out of the PHA's operating funds.

13. A new § 804.110(k) would be added to make it clear that the amount available for use in a homebuyer's Earned Home Payments Account is the net amount remaining after deducting amounts the homebuyer owes the PHA, including delinquent monthly payments.

14. Many comments to HUD have indicated the desirability of providing additional equity incentive for homebuyers paying more than the amount necessary to cover the per unit provision for maintenance and operation (break-even). Section 804.112(e) would therefore be amended to provide that where the PHA accumulates an operating reserve in excess of the HUD-determined amount necessary for the financial needs of the project (maximum operating reserve level), the excess shall be prorated to the equity accounts of such homebuyers in proportion to the amounts of their excess payments during the year. Homebuyers whose payments for the year were less than the break-even amount for the year, or are delinquent in making required payments, would not be eligible for the additional credits.

## OPERATING SUBSIDY

15. A new § 804.109(e) would provide that HUD will pay operating subsidy for the cost of Independent Public Accountant Audits. The regulations would also permit the payment of operating subsidy to cover HUD-approved expenses for:

(a) Vacancy losses if the PHA is making every reasonable effort to fill the vacancies.

(b) Where a homebuyer's agreement has been terminated, collection losses and costs to put the home in condition for the next occupant.

(c) HUD-approved homebuyer counseling.

(d) Training of staff and commissioners.

(e) Where HUD finds that there are unusual circumstances justifying payment of operating subsidy.

## PURCHASE OF HOME

16. The regulations specify that a homebuyer may not purchase the home unless the homebuyer has achieved a specified minimum balance in the Earned Home Payments Account within the first two years. Section 804.110(c)(2) would be amended to provide that the PHA may allow additional time to reach the required balance where there are extenuating causes of the failure or the reasons for the failure may be eliminated by counseling or other assistance.

17. A new § 804.110(c)(3) would make it clear that the PHA must consult with the homebuyer's association before determining that a homebuyer may exercise the option to purchase, but that the final decision is the PHA's responsibility.

18. Section 804.115(b) would be amended to provide that the purchase price for a homebuyer other than the homebuyer who first occupies the home is the appraised value or replacement cost of the home, whichever is lower. Section 804.115(c) would be amended to provide a uniform amortization period for all homebuyers in the development.

19. Section 804.116(c) would be added to state the duty of the PHA to remit purchase payments to HUD. Where PHA mortgage financing is used, these amounts include the mortgagor's debt service payments.

## PHA MORTGAGE FINANCING

20. In response to difficulties encountered by Turnkey III homebuyers in obtaining independent financing for purchase of the homes, Section 804.116(a) of the proposed regulations would allow PHA purchase-money financing for a homebuyer able to cover the expenses of homeownership, including debt service, insurance and taxes, with 25 percent of family

income (see also definition of "PHA homeownership financing" (§ 804.102)). The PHA financing could only be offered when other suitable financing is not available.

Where the PHA financing is used, the PHA would take back at settlement a promissory note and mortgage for the unpaid balance of the purchase price. The financing instruments would provide for a reduction, if the mortgagor's family income is later reduced, of the portion of the monthly mortgage payment attributable to debt service (§ 804.116(a)(4)(iii)(C)). Even if the debt service payment is reduced, the mortgage debt would continue to be reduced each month in accordance with a predetermined amortization schedule as long as the mortgagor is meeting all obligations (§§ 804.116 (a)(4)(ii); 804.116 (a)(4)(iii)(D)). The mortgagor's payments for insurance, taxes and the PHA mortgage servicing charge would not be subject to reduction on account of any changes in the family income. Since the payments by a mortgagor-homeowner are not "rental," the regulations (§ 804.116(a)(4)(iii)(C)) specify that these minimum payments are not subject to the minimum or maximum rental (Brooke) provisions in section 3(1) of the Act, or the HUD Brooke regulations.

## RECAPTURE OF PROFIT ON RESALE

21. Section 804.114 now provides for recapture of profit from a homebuyer who sells within 5 years after taking title to the home. These provisions would be modified to require recapture of profit only if the homeowner resells within the five-year period commencing with the first day of the month following the effective date of the Homeownership Agreement. Recapture would not be required if the homeowner sells after this five-year period. Since a homebuyer may not take title to the home for the first two years of occupancy, the recapture provisions would now apply only to a resale during the three years after the homebuyer is first able to exercise the option to purchase the home. The promissory note would no longer provide for reductions of the recapture obligation over the five-year period.

## MISCELLANEOUS AMENDMENTS

22. Section 804.107(o)(2) provides that where a Turnkey III family has lost homeownership potential, the family may be required to vacate the home if the PHA offers the family a suitable unit in a public housing rental project. These provisions would be amended to provide that the family may also be required to move if the family is able to obtain assistance through the PHA's Section 8 Existing Housing Program.



23. The Planned Unit Development (PUD) or condominium documents establishing a homeowner's duty to make payments to the PHA or homeowner's association for common property maintenance and other purposes should be recorded before any of the homes are conveyed. Section 804.117 would, however, be amended to provide that where the PHA has in fact failed to record, a home may not be conveyed until the homebuyer has contracted to make the payments.

24. Sections 804.109(a)(7), 804.109(c)(2), and 804.110(d) would be amended to incorporate various technical changes concerning maintenance of common property.

25. Section 804.112(a) would be amended to allow the PHA to charge against the project operating reserve costs of non-routine maintenance which are covered by warranty but not paid for under the warranty through no fault or neglect of the homebuyer.

26. Appendices setting forth the forms of special conditions to be included in a Turnkey III ACC, homebuyers agreement, and certification of homebuyer status, would be deleted from the regulation, but use of HUD-prescribed forms would still be required.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address specified above.

Accordingly, it is proposed that 24 CFR Part 804, Subpart B would be amended to read as follows:

#### Subpart B—Turnkey III Program Description

- Sec.
- 804.101 Introduction.
  - 804.102 Definitions.
  - 804.103 Development.
  - 804.104 Eligibility and Selection of Homebuyers.
  - 804.105 Counseling of Homebuyers.
  - 804.106 Homebuyers Association (HBA).
  - 804.107 Responsibilities of Homebuyer.
  - 804.108 Break-Even Amount.
  - 804.109 Monthly Operating Expense, Operating Subsidy.
  - 804.110 Earned Home Payments Account (EHPA).
  - 804.111 Nonroutine Maintenance Reserve (NEMR).
  - 804.112 Operating Reserve.
  - 804.113 Achievement of Ownership by Initial Homebuyer.
  - 804.114 Resale at Profit During First Five Years.
  - 804.115 Achievement of Ownership by Subsequent Homebuyer.
  - 804.116 PHA Homeownership Financing: conveyance of Home.
  - 804.117 Responsibilities of Homeowner.
  - 804.118 Homeowners Association—Planned Unit Development (PUD).

- Sec.
- 804.119 Homeowners Association—Condominium.
  - 804.120 Realignment of Homeowners Association to HBA.

#### Subpart B—Turnkey III Program Description

##### § 804.101 Introduction.

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities program for Low-Income Families (Turnkey III).

(b) *Applicability.* This subpart shall be applicable to all Turnkey III developments, including those under development or in operation on October 9, 1973, as follows:

(1) With respect to any development to be operated as Turnkey III, the Annual Contributions contract (ACC) shall contain the special provisions for Turnkey III project as prescribed by HUD. A Turnkey III development may include only units which are to be operated as such under Homebuyers Ownership Opportunity Agreements. If for any reason it is determined that certain units should be operated as conventional public housing rental units, such units must be made to comprise or be made part of a conventional public housing rental project. If, however, the PHA is temporarily unable to market vacant units in the Turnkey III development to families which meet the standards for admission of Turnkey III homebuyers, the PHA shall rent the units to low-income families which meet the standards for admission to a public housing rental project, and which agree to move to a suitable unit in a PHA rental project if the PHA so requires.

(2) With respect to Turnkey III developments where no Agreements with homebuyers were signed prior to October 9, 1973, the ACC shall be amended (i) to include special provisions as prescribed by HUD, (ii), to extend the ACC term to 30 years, and (iii) to reduce the Maximum Contribution Percentage to a rate that will amortize the debt in 30 years at the minimum Loan Interest Rate specified in the ACC for the specific Turnkey III project involved. Further development and operation shall be in accordance with this subpart including use of the form of Homebuyers Ownership Opportunity Agreement as prescribed by HUD.

(3) With respect to developments where any Agreements with homebuyers were signed prior to October 9, 1973, the following steps shall be taken:

(i) The ACC shall be amended to include special provisions as prescribed by HUD. Further development and operation shall be in accordance with this subpart.

(ii) The PHA shall offer all qualified homebuyers in the development a new Homebuyers Ownership Opportunity

Agreement in the form prescribed by HUD, provided that the initial purchase prices shall be based on the latest approved Development Cost Budget, or Actual Development Cost Certificate if issued, in lieu of the Development Cost Budget in effect upon award of the Construction Contract or execution of the Contract of Sale, and that if the ACC for the Project has a term of 25 years the Purchase Price Schedule shall be based on a term of 25 years, instead of 30. Each Purchase Price Schedule shall commence with the first day of the month following the effective date of the initial Agreement. No other modification in the new Agreement may be made. In the event the homebuyer refuses to accept the new Agreement, no modifications may be made in the old Agreement and the matter shall be referred to HUD.

(4) With respect to Projects which were under ACC on October 9, 1973, the Total Development Cost Budget shall be revised, if financially feasible, to include the cost of the appraisals which are necessary for computation of the initial purchase prices pursuant to § 804.113. In the event this is not financially feasible, the matter shall be referred to HUD, which may, if necessary, authorize a different method for computation of such initial purchase prices on an equitable basis.

(5) With respect to all developments which were completed by October 9, 1973, the appraisals which are necessary for computation of the initial purchase prices pursuant to § 804.113 shall be made as of the date of completion of the development.

(6) Homebuyers who executed the form of Homebuyers Ownership Opportunity Agreement in the form as prescribed by HUD in accordance with this subpart on the date of execution shall be entitled to all rights and privileges provided under subsequent amendments of the subpart, but such amendments shall not be applied in derogation of any rights or privileges of the homebuyer under the executed Agreement.

##### § 804.102 Definitions.

The term "common property" means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development. Provided however, that in the case of a development that is organized as a condominium or a planned unit development (PUD), the term "common property" shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms "common areas," "common

facilities," "common elements," "common estate," or other similar terms.

The term "development" means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

The term "EHPA" means the Earned Home Payments account established and maintained pursuant to § 804.110.

The term "family income" shall have the meaning set forth in the definition of "Family Income" in 24 CFR § 860.403(f).

The term "homebuyer" means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the PHA, and who have not yet acquired ownership of the home.

The term "homebuyers association" (HBA) means an organization as defined in § 804.106.

The term "homeowner" means a homebuyer who has acquired title to the home.

The term "homeowner association" means an association comprised of homeowners, including condominium associations, having responsibilities with respect to common property.

The term "HUD" means the Department of Housing and Urban Development which provides PHAs with financial assistance through loans and annual contributions and technical assistance in development and operation.

The term "NRMR" means the Non-routine Maintenance Reserve established and maintained pursuant to § 804.111.

The term "PHA" means the local public housing agency which acquires or develops a low-income housing development with financial assistance from HUD, owns the homes until title is transferred to the homebuyers, and is responsible for the management of the homeownership opportunity program.

The term "PHA homeownership financing" means PHA financing for purchase of a home by an eligible homebuyer who gives the PHA a promissory note and mortgage for the balance of the purchase price in accordance with § 804.116(a).

The term "project" is used to refer to the development in relation to matters specifically related to the Annual Contributions Contract.

##### § 804.103 Development.

(a) *Financial framework.* The PHA shall finance development or acquisition by sale of its notes (bond financing shall not be used) in the amount of the Minimum Development Cost. Payment of the debt service on the notes is assured by the HUD commitment to

provide debt service annual contributions.

(b) *Contractual framework.* There are three basic contracts:

(1) An Annual Contributions Contract containing the Special Conditions as prescribed by HUD for a Turnkey III Homeownership Opportunity Project;

(2) A Homebuyers Opportunity Agreement in the form prescribed by HUD, which sets forth the respective rights and obligations of the low-income occupants and the PHA, including conditions for achieving homeownership; and

(3) A Recognition Agreement (see Appendix II of Subpart D of this part) between the PHA and the HBA under which the PHA agrees to recognize the HBA as the established representative of the homebuyers.

(c) *Community Participation Committee (CPC).* In the necessary development of citizens' participation in and understanding of the Turnkey III program, the PHA should consider formation and use of a CPC to assist the community and the PHA in the development and support of the Turnkey III program. The CPC shall be a voluntary group comprised of representatives of the low-income population primarily and may also include representatives of community service organizations.

##### § 804.104 Eligibility and Selection of Homebuyers.

(a) *Adoption of Admission Regulations.* The PHA shall adopt regulations establishing standards and procedures for the admission of homebuyers to Turnkey III developments, including any preferences, priorities or other factors affecting admission. The PHA admission regulations shall be in accordance with all applicable HUD regulations or other HUD requirements.

(b) *Announcement of availability of housing; fair housing marketing.*

(1) The availability of housing under Turnkey III shall be announced to the community at large. Families on the waiting list for PHA conventional public housing rental units who wish to be considered for Turnkey III must apply specifically for that program (see paragraph (e) of this section).

(2) The PHA shall submit to HUD an Affirmative Fair Housing Marketing Plan and shall otherwise comply with the provisions of the Affirmative Fair Housing Marketing Regulations, 24 CFR Part 200, subpart M, as if the PHA were an applicant for participation in a HUD housing program. This Plan shall be submitted with the development program and no development program may be approved without prior approval of the Plan pursuant to HUD procedures under said Affirmative Fair Housing Marketing Regulations. If the development program has been approved, but the Annual Contributions Contract has not been executed, prior to October 9, 1973, an Affirmative Fair Housing Marketing Plan must be approved prior to execution of said contract.

(c) *Eligibility and standards for admission.* (1) Homebuyers shall be low-income families as determined in accordance with the income definitions and limits established by the PHA in accordance with the Act, and approved by HUD (see paragraph (c)(2) of this section). The PHA's established priorities and preferences and the requirements for administration of low-income housing under Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000d) shall be applicable except that the procedures used for homebuyer selection under Turnkey III shall be those set forth in this section. In carrying out these procedures the aim shall be to provide for equal housing opportunity in such a way as to prevent segregation or other discrimination of the basis of race, creed, color or national origin in accordance with the Civil Rights Acts of 1964 (Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000d) and 1968 (Public Law 90-284, 82 Stat. 73, 42 U.S.C. 3601).

(2) Subject to HUD approval the PHA shall adopt regulations establishing schedules of maximum income limits. The PHA may establish maximum income limits for Turnkey III which are different from those for its conventional rental program, provided that those limits are in accord with all applicable statutory and administrative requirements and are approved by HUD.

(d) *Determination of eligibility and preparation of list.* The PHA, without participation of a recommending committee (see paragraph (f)(1) of this section), shall determine the eligibility of each applicant family in respect to the income limits for the development and shall then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit and factors affecting preference or priority established by the PHA's regulations.

(e) *List of applicants:*

(1) *Establishment of separate list.* A separate list of applicants for Turnkey III shall be maintained, consisting of families who specifically apply and are eligible for admission to such housing.

(2) *Dating of applications.* All applications for Turnkey III shall be dated as received.

(3) *Effect of applicant status.* The filing of an application for Turnkey III by a family which is an applicant



for PHA conventional rental public housing or is an occupant of such housing shall in no way affect its status with regard to such rental housing. Such an applicant shall not lose its place on the housing waiting list until the application is accepted for Turnkey III and shall not receive any different treatment or consideration with respect to conventional rental public housing because of having applied for Turnkey III.

(f) *Determination of potential for homeownership.*

(1) *Recommending committee.* The PHA should consider use of a recommending committee to assist in the selection of homebuyers from the families determined to have potential for homeownership. If a recommending committee is used, it should be composed of representatives of the CPC (if any), the PHA and the HBA. The PHA shall submit to the committee prompt written justification of any rejection of a committee recommendation stating grounds, the reasonableness of which shall be in accord with applicable PHA and HUD regulations. Each member of such a committee, at the time of appointment, shall be required to furnish the PHA with a signed statement that the member will (i) follow selection procedures and policies that do not automatically deny admission to a particular class, that insure selection on a non-discriminatory and non-segregated basis, and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan, and (ii) maintain strict confidentiality by not divulging any information concerning applicants or the deliberations of the committee to any person except to the PHA as necessary for purposes of the official business of the committee.

(2) *Potential for homeownership.* In order to be considered for selection, a family must be determined to meet at least all of the following standards of potential for homeownership which are intended to assure (in accordance with Section 6(c)(4)(D) of the United States Housing Act of 1937) that selection for the Turnkey III development is limited to low-income families capable of assuming the responsibilities of homeownership:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRMR, and the estimate average monthly cost of utilities attributable to the home;

(ii) At least one member gainfully employed, or having an established source of continuing income.

(g) *Selection of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection

shall be made in sequence from the waiting list established in accordance with this section provided that the following shall be assured:

(1) Selection procedures that do not automatically deny admission to a particular class; that insure selection on a nondiscriminatory and nonsegregated basis; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Marketing Plan.

(2) Achievement of an average monthly payment for the development, which is at least equal to the break-even amount for the development (see § 804.108). This standard shall be complied with both in the initial selection of homebuyers and in the subsequent filling of vacancies at all times during the life of the development. If there is an applicant who has potential for homeownership but whose required monthly payment under the PHA's Rent Schedule would be less than the break-even amount for the suitable size and type of unit, such applicant may be selected as a homebuyer, provided that the incomes of all selected homebuyers shall result in average required monthly payments at least equal to the break-even amount for the development. Such an average monthly payment for the development may be achieved by selecting other low-income families who can afford to make required monthly payments above the break-even amounts for their suitable sizes and types of units.

(3) Achievement and maintenance of occupancy of the development by a body of homebuyers with a broad range of incomes generally representative of the range of incomes of low-income families in the area who would be qualified for admission to the Turnkey III development.

(4) Avoidance of concentrations of the most economically deprived families in any one or all of the PHA's low-income developments.

(5) In any Project placed under ACC after September 26, 1975, achievement and maintenance of occupancy of at least 20 percent of the homes by homebuyers whose incomes do not exceed 50 percent of the median income of families in the area who would be qualified for admission to the development, with adjustments for smaller and larger families, as determined by HUD.

(h) *Notification of applicants.* (1) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (g)(2) of this section are met, the selected applicants shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(2) Applicants who are not selected for a specific Turnkey III development shall be so notified in accordance with HUD-approved procedures. The notice shall state the reason for the applicant's rejection (including a recommendation by the recommending committee unless the applicant has previously been so notified by the committee) and the notice shall state that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice.

§ 804.105 Counseling of homebuyers.

The PHA shall provide counseling and training as provided in subpart C of this part, with funding as provided in § 804.206 of this part. Applicants for admission shall be advised of the nature of the counseling and training programs available to them and the application for admission shall include a statement that the family agrees to participate and cooperate fully in all official pre-occupancy and post-occupancy training and counseling activities. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

§ 804.106 Homebuyers Association (HBA).

An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement or who are homeowners. It is formed and organized for the purposes set forth in § 804.304 of this part. The HBA shall be funded as provided in § 804.305 of this part. In the absence of a duly organized HBA, the PHA shall be free to act without the HBA action required by this subpart.

§ 804.107 Responsibilities of homebuyer.

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the PHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable HUD regulations and guidelines. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating, interior painting and the maintenance of grounds (lot) on which the dwelling is located.

It does not include maintenance and replacements provided for by the NRMR described in § 804.111.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by the homebuyer family, or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the PHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the PHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the PHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the PHA and the HBA.

(e) *Use of home.* A homebuyer shall not (1) sublet the home without the prior written approval of the PHA and HUD, (2) use or occupy the home for any purpose deemed hazardous by insurance companies on account of fire or other risks, or (3) provide accommodations (unless approved by the HBA and the PHA) to boarders or lodgers. The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the PHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of the homebuyer family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the PHA has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the development as a whole, or (2) affect the use of the home for residential purposes, or (3) violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the PHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the PHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the PHA shall inspect it and give the homebuyer a written state-

ment of the repairs and other work, if any, required to put the home in good condition for the next occupant (see § 804.110(j)(1)). The homebuyer, homebuyer's representative, and a representative of the HBA may join in any such inspections by the PHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of common property as discussed in § 804.110(d) and § 804.111(c).

(j) *Homebuyer's required monthly payment.* (1) The term "required monthly payment" as used herein means the monthly payment ("Contract Rent," see definition at § 860.403(a)) the homebuyer is required to pay as lease rental to the PHA on or before the first day of each month. Although the total monthly housing cost consists of the sum of the break-even amount (see § 804.108) and the debt service (payments of principal and interest) on the applicable share of the capital cost of the development, the homebuyer, so long as the homebuyer qualifies as low income, is not required to pay the full amount, but is assisted by HUD's annual contributions. The homebuyer's required monthly payment, which is based upon Family Income, shall be an amount in accordance with the schedule established by the PHA and approved by HUD in accordance with the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) and applicable HUD regulations (24 CFR Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements), provided, however, that the required monthly payment shall not be more than the sum of the monthly break-even amount and the monthly debt service amount shown on the Purchase Price Schedule for the home except that if the rent, including utilities, for comparable unsubsidized housing in the locality is lower, such lower amount may be established as the maximum if the PHA determines with HUD approval that this would be in the best interest of the development.

(2) The required monthly payment may be adjusted as a result of the PHA's regularly scheduled or specially scheduled reexamination of the Family Income and family composition. Interim changes may be made in accordance with the PHA's policy on reexaminations, or under unusual circumstances, at the request of the homebuyer, if both the PHA and the HBA agree that such action is warranted.

(3) The required monthly payment may also be adjusted by changes in the required percentage of income to reflect (i) changes in operating expenses as described in § 804.109 and (ii) changes in utility allowances.

(4) The PHA shall not refuse to accept monthly payments because of any other charges (i.e., other than overdue monthly payments) owed by the homebuyer to the PHA; however, by accepting monthly payments under such circumstances, the PHA shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

(k) *Application on monthly payment.* The PHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA (see § 804.110);

(2) To the credit of the homebuyer's NRMR (see § 804.111);

(3) For payment of monthly operating expense including contribution to operating reserve (see § 804.109).

(l) *Assignment and succession.* Until such time as the homebuyer obtains title to the home, it shall be used only to house a family of low income. Therefore:

(1) A homebuyer shall not assign any right or interest in the home or under the Homebuyers Ownership Opportunity Agreement without the prior written approval of the PHA and HUD.

(2) In the event of death, mental incapacity or abandonment of the home by the homebuyer, the person designated as the successor in the Homebuyers Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the home at the time of the event and is determined by the PHA to meet all of the standards of potential for homeownership as set forth in § 804.104(f)(2). Such person shall be designated by the homebuyer at the time the Homebuyers Ownership Opportunity Agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the PHA may designate as the homebuyer any family member who was an occupant at the time of the event, who meets the standards of potential for homeownership, and who agrees in writing to assume the obligations of the Homebuyers Ownership Opportunity Agreement.

(3) If there is no qualified successor in accordance with paragraph (1)(2) of this section, the PHA shall terminate the Agreement and another family shall be selected except under the following circumstances: Where a minor child (or children) of the homebuyer family is in occupancy, then in order to protect the child's continued occupancy and opportunity for acquisition of ownership of the home, the PHA may approve an appropriate adult(s)



as legal guardian of the child's interest in the Homebuyers Ownership Opportunity Agreement, where the guardian undertakes, under a written agreement with the PHA, to perform the obligations of the Homebuyers Ownership Opportunity Agreement in the interest and behalf of the child, and where the child continues to live in the home with an adult to care for the child (the guardian or another person). In such case the income of the person who takes care of the child and is living in the home shall be included in Family Income for the purpose of determining the amount of the required monthly payment, but the provisions of paragraph (c) of this § 804.107 shall not be applicable during the period of such approved occupancy. The guardian and the person living in the home to care for the child shall have no right or interest in the home or under the Homebuyers Ownership Opportunity Agreement except in a fiduciary capacity on behalf of the children, and shall have no right to any amounts payable from the EHPA pursuant to § 804.110(j)(2) upon termination of the Agreement. During the period of guardianship, the home shall not be conveyed with PHA Homeownership. Financing pursuant to § 804.116(a).

(m) *Termination by PHA.* (1) In the event the homebuyer should breach the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any of the other homebuyer obligations under the Agreement, the PHA may terminate the Agreement 30 days after giving notice of its intention to do so in accordance with paragraph (m)(2) of this section.

(2) *Notice of termination by the PHA shall be in writing.* Such notice shall state (i) the reason for termination, (ii) that the homebuyer may respond to the PHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination, (iii) that in such response homebuyer may be represented or accompanied by a person of the homebuyer's choice, including a representative of the HBA, (iv) that the PHA will consult the HBA concerning this termination, and (v) that unless the PHA rescinds or modifies the notice, the termination shall be effective at the end of the 30-day notice period.

(n) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyers Ownership Opportunity Agreement by giving the PHA 30 days notice in writing of intention to termi-

nate and vacate the home. In the event that the homebuyer vacates the home without notice to the PHA, the Agreement shall be terminated automatically and the PHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(o) *Transfer to public housing rental unit or Section 8 Existing Program.* (1) Inasmuch as the homebuyer was found eligible for admission to the development on the basis of having the necessary elements of potential for homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. Accordingly, in the event it should develop that the homebuyer no longer meets one or more of these elements of homeownership potential, the PHA shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from the date of evaluation of the results of the investigation the PHA shall make a reevaluation as to whether the family has regained the potential for homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the reevaluation. Further extension of time may be granted in exceptional cases, but in any event, a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The PHA shall invite the HBA to participate in all investigations and evaluations.

(2) If the final determination of the PHA, after considering the views of the HBA, is that the homebuyer should be transferred to a suitable dwelling unit either in a PHA rental project, or through use of the PHA's Section 8 Existing Housing Program, the PHA shall give the homebuyer written notice of the PHA determination of the loss of homeownership potential and of the offer of transfer. The notice shall state that the transfer shall occur (i) as soon as a suitable rental unit is available for occupancy, or (ii) when the PHA has issued a Certificate of Family Participation, and has determined that a suitable unit is available, but no earlier than 30 days from the date of the notice, provided that an eligible successor for the homebuyer unit has been selected by the PHA. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice. The notice shall include a statement (i) that the homebuyer may respond to the PHA in writing or in

person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response the homebuyer may be represented or accompanied by a person of the homebuyer's choice, including a representative of the HBA, and (iii) that the PHA has consulted the HBA concerning this determination and offer of transfer.

(3) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph (o), the amount in the homebuyer's EHPA shall be applied in accordance with the provisions of § 804.110(j).

#### § 804.108 Break-even amount.

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the items listed in the illustration below. A separate break-even amount shall be established for each size and type of dwelling unit, as well as for the Project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit; similar variations as to other line items may be made if the PHA deems this equitable.

*Illustration.* The following is an illustration of the computation of the break-even amount based upon hypothetical amounts.

| (1) Operating Expense (see § 804.109):                   |        |
|----------------------------------------------------------|--------|
| Administration.....                                      | \$8.50 |
| Homebuyer services.....                                  | 2.00   |
| Project-supplied utilities.....                          | 3.00   |
| Routine maintenance—                                     |        |
| Common property.....                                     | 3.00   |
| Protective services.....                                 | 2.00   |
| General expenses.....                                    | 6.50   |
| Nonroutine maintenance—                                  |        |
| Common property (Contribution to operating reserve)..... | 2.00   |
| (2) Earned Home Payments Account (see § 804.110).....    | 12.00  |
| (3) Nonroutine Maintenance Reserve (See § 804.111).....  | 77.50  |
| Break-Even Amount.....                                   | 46.50  |

The break-even amount does not include the monthly allowance for utilities which the homebuyer pays for directly, nor does it include any amount for debt service on the Project notes.

(b) *Excess over break-even.* When the homebuyer's required monthly payment (see § 804.107(j)) exceeds the applicable break-even amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

(c) *Deficit in monthly payment.* Where the required monthly payment is less than the amounts for EHPA and NRMR included in the break-even amount, the EHPA and NRMR shall nevertheless be credited with the amount for these accounts, and the deficiency shall be supplied out of the operating funds.

#### § 804.109 Monthly operating expense, operating subsidy.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telephone, and telegraph, etc.

(2) *Homebuyer services.* PHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs.

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the PHA as part of operating expenses.

(4) *Routine maintenance—common property.* For community building grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the PHA responsibility for maintenance (see also § 804.109(c)).

(5) *Protective services.* The cost of supplemental protective services paid by the PHA for the protection of persons and property.

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* An estimate of the amount required to accumulate an operating reserve for nonroutine maintenance and replacements of common property (see § 804.112(b)).

(b) *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the PHA's HUD-approved operating budget for the fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. It is a subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the difference. Such adjustment may result in a change in the required monthly payment (see § 804.107(j)(3)).

(c) *Provision for common property maintenance.* (1) During the period the PHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though

a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the development (i.e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of homes in the development, resulting in the annual amount for each home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property).

(2) After the homeowners association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the PHA for routine or nonroutine maintenance of common property.

(d) *Monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and copies shall be provided to homebuyers, upon request.

(e) *Operating subsidy.* (1) Operating subsidy shall be paid to reimburse the PHA for the HUD-approved costs of Independent Public Accountant audits. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes:

(i) Operating Expenses for vacant units where the PHA shows to HUD's satisfaction that it is making every reasonable effort to fill the vacancies.

(ii) Collection losses due to payment delinquencies on the part of homebuyer families whose Agreement have been terminated, and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a substitute homebuyer family. Operating subsidy may be made available for these purposes only after the PHA has previously utilized all available homebuyer credits.

(iii) The costs of HUD-approved homebuyer counseling.

(iv) HUD-approved costs for training of staff and Commissioners.

(v) Operating costs resulting from other unusual circumstances, as determined by HUD, justifying payment of operating subsidy.

(2) No operating subsidy shall be paid for utilities, routine maintenance or other items for which the homebuyer is responsible (other than is necessary to put a vacant home in condition for a substitute family).

#### § 804.110 Earned Home Payments account (EHPA).

(a) *Credits to the account.* The PHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of the required monthly payment equal to the PHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homebuyer's home, shall be set aside in the EHPA. In addition, this account shall be credited with (1) any voluntary payments made pursuant to § 804.110(f), and (2) any amount earned through the performance of maintenance as provided in § 804.110(d) and § 804.111(c)(1).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 804.107(a), the PHA shall arrange to have the work done in accordance with the procedures established by the PHA and the HBA and the cost thereof shall be charged to the homebuyer's EHPA. Inspection of the home shall be made jointly by the PHA and the HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the PHA (see § 804.111), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* (1) The homebuyer may exercise an option to buy the home, by paying the applicable purchase price pursuant to § 804.113 or § 804.115, only after satisfying the following conditions precedent:

(i) Within the first two years of occupancy, the homebuyer has achieved a balance in the EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section.

(ii) The homebuyer has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement.

(iii) The homebuyer has rendered, and is continuing to render, satisfactory performance of the responsibilities to the HBA.

(2) When the homebuyer has met these conditions precedent, the PHA shall give the homebuyer a certificate in the form prescribed by HUD stating that the homebuyer may exercise the option to buy the home. After achieving he required minimum EHPA balance within the first two years of occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to the EHPA. If the homebuyer fails to meet either the obligation to achieve



the minimum EHPA balance, as specified, or the obligation thereafter to continue adding to the EHPA, the PHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the PHA in accordance with § 804.107(m). If the homebuyer fails to achieve the EHPA balance required under § 804.110(c)(1)(i) within the first two years, but the PHA determines that there are extenuating causes of such failure, or that the reasons for the failure may be eliminated by counseling or other assistance, the PHA may allow additional time to reach the required EHPA balance and a certificate may be granted after achievement of the required EHPA balance.

(3) Before deciding to issue a certificate, or to grant additional time for earning a certificate, or to terminate the Agreement for failure to meet the conditions for issuance of a certificate, the PHA shall consult with the HBA, but the final decision shall be the responsibility of the PHA.

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to a prior written agreement between the homebuyer and the PHA, covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of this work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the PHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the PHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the PHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less than semi-annually, the PHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held

for the account of all the homebuyer's EHPAs, and (iii) the aggregate unvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to the home within a shorter period, the homebuyer may, either periodically or in a lump sum voluntarily make payments over and above the required monthly payments. Such voluntary payments shall be credited to the homebuyer's EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances, as determined by the HBA and the PHA, a homebuyer's EHPA may be used to pay the homebuyer's delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the PHA or the HBA.

(h) *Annual statement to homebuyer.* The PHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in the EHPA, and (2) the amount in the NRMR. During the year, any maintenance or repair done on the dwelling by the PHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for the home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to use, assign, withdraw, or in any way dispose of the funds in the EHPA except as provided in this section or in § 804.113 and § 804.115.

(j) *Application of EHPA upon termination of Agreement.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the PHA is terminated (see § 804.107 (l), (m), (n) and (o)), the PHA shall charge against the homebuyer's EHPA the amounts required to pay (i) monthly payments the homebuyer is obligated to pay up to the date the home is vacated; (ii) the required monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 804.107; and (iii) the cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 804.107(h).

(2) If the EHPA balance is not sufficient to cover all of these charges, the PHA shall require the homebuyer to

pay the additional amount due. If the amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the PHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date the home is vacated, even though the actual cost of such repair has not yet been determined, if the homebuyer has given the PHA notice of intention to vacate at least 30 days prior to the date the homebuyer vacates and if the amount to be charged against the homebuyer's EHPA for such repairs is based on the PHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

(k) *EHPA balance.* All references in this subpart B to the EHPA balance or amount available in the homebuyer's EHPA shall be deemed to mean the net amount remaining in the account after taking into consideration any amounts due the PHA from the homebuyer, including delinquent required monthly payments.

#### § 804.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The PHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's required monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the PHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyers Ownership Opportunity Agreement,

taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, the flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the PHA and approved by HUD as part of the submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The PHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (C)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the PHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer's Ownership Op-

portunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the PHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the PHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the PHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the PHA shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate unvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

#### § 804.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including any operating subsidy) exceed total operating expenditures of the development, the PHA shall establish an operating reserve up to the maximum operating reserve for the development (see § 804.112(d)). The purpose of this reserve is to provide funds for: (1) the infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures, (2) nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or covered by warranty but not paid for thereunder through no fault or neglect of the homebuyer, (3) working capital for payment of a deficit in a homebuyer's NRMR, until such deficit is offset by future required monthly payments by the homebuyer or at

settlement in the event the homebuyer should purchase, and (4) a deficit in the operation of the development for a fiscal year, including a deficit resulting from required monthly payments totaling less than the break-even amount for the development.

(b) *Nonroutine Maintenance—common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see § 804.108 and § 804.109) shall be determined by the PHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the PHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in § 804.109(c). When the operating reserve reaches the maximum authorized in accordance with § 804.112(d) below, the break-even (monthly operating expense) computations (see § 804.108 and § 804.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Transfer to homeowners association.* The PHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see § 804.118(d) and § 804.119(f)). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners association a portion of the operating reserve then held by the PHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (d) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve, and multiply the actual operating reserve balance by this percentage.



(d) *Establishment of maximum operating reserve.* The maximum operating reserve that may be retained by the PHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year, and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, PHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see § 804.109 above for explanation of various categories of expense).

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve, the excess shall be prorated to the NRMR of each homebuyer whose total required monthly payments paid for the fiscal year exceeded the total break-even amount for the year. The amount to be credited to each eligible homebuyer's NRMR shall be determined as follows:

(1) Compute the amount by which each homebuyer's total required monthly payments paid during the fiscal year exceeded the total break-even amount for the year, and compute the aggregate of these individual excess amounts. Those homebuyers whose required monthly payments for the year were less than the break-even amount for the year, and those homebuyers who at the time of the computation are delinquent in payment of any required monthly payments, shall not be eligible for the additional credit, and shall not be included in the computation.

(2) Form a fraction in which the numerator is the individual homebuyer's excess over break-even, and the denominator is the aggregate excess for all the homebuyers, as determined in (1) above.

(3) Multiply the total amount to be prorated by the fraction formed in (2) above. The amount so determined shall be credited to the homebuyer's NRMR. Following the end of the fiscal year in which the last home has been conveyed by the PHA, the balance of the operating reserve held by the PHA shall be paid to HUD.

#### § 804.113 Achievement of ownership by initial homebuyer.

(a) *Determination of initial purchase price.* The PHA shall determine the initial purchase price of the home by two basic steps, as follows:

*Step 1:* The PHA shall take the Estimated Total Development Cost (in-

cluding the full amount for contingencies as authorized by HUD) of the development as shown in the Development Cost Budget in effect upon award of the Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management, and furnishings attributable to such facilities as set forth in the development program for the development. The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

*Step 2:* The PHA shall apportion the Estimated Total Development Cost for Homebuyers among all the homes in the development. This apportionment shall be made by obtaining an HUD appraisal of each home and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the homes and the Estimated Total Development Cost For Homebuyers. The adjusted amount for each home shall be the initial purchase price for that home.

(b) *Purchase price schedule.* Each homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly-declining purchase price over a 30-year period,<sup>1</sup> commencing with the initial purchase price on the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement and (2) the monthly debt service amount upon which the Schedule is based. The Schedule and debt service amount shall be computed on the basis of the initial purchase price, a 30-year period, and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph (a) of this section, rounded up, if necessary, to the next multiple of one-fourth of the percent (¼ percent).

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs (Incidental Costs means the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the PHA's attorneys, mortgage application and organization, closing

<sup>1</sup> Change to 25-year period where the ACC for the Project has a term of 25 years.

and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the homebuyer shall be refunded (i) the net additions, if any, credited to the EHPA subsequent to such month, and (ii) such part of the required monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the unit and the interest portion of the debt service shown in the Purchase Price Schedule.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the homebuyer's EHPA and NRMR as described in paragraph (c)(1) of this section, the homebuyer may buy the home (i) by paying the excess amount with sums obtained through financing other than PHA Homeownership Financing or otherwise, or (ii) if eligible, by obtaining PHA Homeownership Financing under § 804.116(a) for all or any portion of the unpaid balance of the purchase price, and paying the Incidental Costs and any remaining unpaid balance of the purchase price by application of EHPA and NRMR balances or otherwise. The purchase price shall be the amount shown on the Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

(3) If the PHA finances purchase of the home in accordance with § 804.116(a), the balances in the homebuyer's EHPA and NRMR (after payment pursuant to § 804.111(d)(2) of any deficit in the NRMR) shall be applied in the following order:

- (i) To payment of the initial financing costs specified in § 804.116(a)(2)(iii).
- (ii) To payment of the purchase price.

If application of the EHPA and NRMR does not provide sufficient funds for item (i) the homebuyer shall pay the deficiency in cash. PHA Homeownership Financing shall be limited to the unpaid balance of the purchase price, and shall not be available to cover any part of item (i).

#### § 804.114 Resale at profit during first five years.

(a) *Promissory note.* (1) If a homebuyer takes ownership (regardless of whether ownership is achieved under § 804.113 or § 804.115) at any time within the five-year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement, the homebuyer shall sign a note, in an amount determined in ac-

cordance with § 804.114(a)(2), obligating the homebuyer to make a payment to the PHA if the homebuyer resells the home at a profit within such 5-year period. If, however, the homeowner should purchase and occupy another home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III home, the PHA shall refund to the homeowner the amount previously paid under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homebuyer pursuant to paragraph (a)(1), of this section shall be a non-interest-bearing promissory note to the PHA, which shall be in the form prescribed by HUD. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a mortgage. If purchase of the home was financed in whole or in part by mortgage financing other than PHA financing, the mortgage to the PHA under this paragraph (2) shall be subordinated to the lien of such other mortgage. The amount of the note shall be computed by taking the HUD-appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (i) the homebuyer's purchase price plus the Incidental Costs, (ii) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (iii) the increase in value of the home, determined by appraisal, due to improvements paid for as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the PHA under such notes shall be retained by the PHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (1) to reduce the PHA's capital indebtedness on the Project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such

Annual Contributions Contract as the PHA may then have with HUD.

Illustration. If the homeowner's purchase price is \$10,000, the Incidental Costs are \$500, the value added by improvements is \$1,000, and the HUD-appraised value at the time ownership is acquired is \$17,000, the note computation would be as follows:

|                               |          |
|-------------------------------|----------|
| HUD appraised value.....      | \$17,000 |
| Homeowner's purchase price .. | 10,000   |
| Incidental Costs.....         | 500      |
| Improvements.....             | 1,000    |
| Note amount .....             | 5,500    |

If the homeowner, in this example, resells the home during the first year for a sales price of \$17,500, has resale costs of \$1,600 (including a sales commission), and has added \$1,500 value by further improvements, the homeowner would be required to pay the PHA \$5,500, as indicated in the following computations:

|                                          |          |
|------------------------------------------|----------|
| Resale price.....                        | \$17,500 |
| Resale costs.....                        | 1,600    |
| Purchase price and Incidental Costs..... | 10,500   |
| All improvements.....                    | 2,500    |
| Payable to PHA .....                     | 2,900    |

(b) *Residency requirements.* The five-year note period shall be extended by any period during which the homebuyer/homeowner rents or otherwise does not use the home as a principal place of residence. Only the actual amount of time of residence as a homebuyer or homeowner is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request a release from the note, and PHA shall provide the release.

#### § 804.115 Achievement of ownership by subsequent homebuyer.

(a) *Definition.* In the event the initial homebuyer vacates the home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to § 804.107(1)(2) is herein called a "subsequent homebuyer."

(b) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be the lower of the current appraised value, or the current replacement cost of the home, both as determined or approved by HUD.

(c) *Purchase price schedule.* Each subsequent homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period<sup>1</sup> commencing with the first day of the month following the effective date of

<sup>1</sup> Change to 25-year period where the ACC for the Project has a term of 25 years (see § 804.101(b)(3)).

the Homebuyers Ownership Opportunity Agreement of the subsequent homebuyer, and (2) the level monthly debt service amount necessary for complete amortization of the initial purchase price over such period at the interest rate used to complete the Purchase Price Schedule for the initial homebuyer.

(d) *Disposition of excess over maximum operating reserve after payment of PHA debt.* After payment in full of the PHA's debt, if there are any subsequent homebuyers, any amounts in the operating reserve for the development in excess of the maximum reserve level shall be apportioned to the NRMRs of the subsequent homebuyers in accordance with § 804.112(e).

#### § 804.116 PHA Homeownership Financing; Conveyance of home.

(a) *PHA Homeownership Financing.* (1) *Availability of PHA Financing.* A homebuyer may, if eligible, buy the home by obtaining PHA Homeownership Financing for all or any portion of the purchase price, and by paying at settlement all of the initial financing costs specified in paragraph (a)(iii) of this section, as well as any unpaid balance of the purchase price not covered by the financing. The PHA shall provide counseling to homebuyers eligible for PHA Homeownership Financing.

(2) *Eligibility.* A homebuyer shall be eligible for PHA Homeownership Financing if:

(i) The PHA determines that other suitable financing is not available.

(ii) The homebuyer's income is at the level and is likely to continue at the level at which 25 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the homebuyer's Purchase Price Schedule and the PHA's estimate of the following monthly payments and allowances as approved by HUD:

(A) Payment for fire and extended coverage insurance on the home;

(B) Payment for taxes, special assessments and all other charges which are a lien against the property, including real property taxes and assessments;

(C) Payment for the PHA mortgage servicing charge;

(D) Payment for maintenance and operation of any common property;

(E) Amount allowed as necessary for maintenance of the home; and

(F) Amount allowed as necessary for utilities for the home.

(iii) The homebuyer can pay at settlement all of the following initial financing costs; the amounts necessary for settlement costs, the initial premium for fire and extended coverage insurance carried on the home after conveyance, and a contribution for the



Homeowner's Reserve in an amount equal to twelve times the sum of items (2)(i)(A) through (E) (available balances in the homebuyer's EHPA and NRMR, may be applied for the initial financing costs in accordance with § 804.113(c)(3)).

(3) *Notice of Financing Availability.* If the PHA determines that a homebuyer is eligible for PHA Homeownership Financing, the PHA shall notify the homebuyer in writing. After the PHA has given the notice, the homebuyer shall continue to have all of the rights and obligations of a homebuyer. However, during this period there shall be no further reduction in the purchase price under the purchase price schedule, and the purchase price at the time the homebuyer purchase the home shall be the amount shown on the purchase price schedule for the month the PHA gave notice of eligibility for financing.

(4) *Promissory Note and Mortgage.* (i) When PHA Homeownership Financing is utilized, the homebuyer shall execute and deliver a promissory note and mortgage at settlement on the home. The principal amount of the mortgage debt shall be equal to the unpaid balance of the purchase price of the home as determined in accordance with § 804.113 or § 804.115, as applicable.

(ii) The mortgage shall be reduced in accordance with a schedule providing for monthly reductions and complete amortization of the mortgage debt over a period commencing on the first day of the month following the date of conveyance and ending on the first day after the end of the period covered by the homebuyer's Purchase Price Schedule, and the schedule shall also show the level monthly debt service amount needed to complete the amortization over this period. The rate of interest upon which the schedule is computed shall be the same rate used to compute the Purchase Price Schedule for an initial homebuyer.

(iii) The promissory note and mortgage shall be in form approved by HUD. The promissory note shall, among other things, provide:

(A) For a Homeowner's Reserve (in the amount specified in paragraph (a)(2)(iii) of this section) to be held by the PHA to be used if the homeowner has no other funds reasonably available to pay for expenses such as maintenance, insurance and taxes;

(B) For monthly mortgage payments sufficient to cover (1) the monthly debt service (principal and interest) shown on the schedule, (2) the PHA mortgage servicing charge, (3) the premiums for fire and extended coverage insurance, (4) taxes, special assessments and other charges which are a lien against the property, and (5) pay-

ment for maintenance and operation of common property, if any.

(C) For a reduction, in the event of a reduction in the homebuyer's family income, of the portion of the monthly mortgage payment attributable to debt service, provided that in any event the homeowner shall be required to pay at a minimum the other elements listed in paragraph (a)(4)(iii)(b) which are included in the monthly mortgage payment. Since the mortgage payments by a mortgagor-homeowner are not "rental," the mortgage payments are not subject to the minimum or maximum rental provisions in section 3(1) of the Act, or the HUD regulations thereunder (Part 860, Subpart D).

(D) That for each month in which the homeowner makes the required monthly mortgage payment, the mortgage debt shall be reduced in accordance with the schedule, notwithstanding any reduction pursuant to paragraph (a)(4)(iii)(C) in the portion of the monthly mortgage payment attributable to debt service.

(iv) The mortgage shall secure performance of all the terms of the promissory note, shall be a first lien on the right, title and interest conveyed to the homebuyer by the PHA, and shall be promptly recorded by the PHA.

(5) *Insurance.* The PHA shall obtain fire and extended coverage insurance for protection of the PHA and the homeowner in an amount and on terms acceptable to HUD, which shall be effective upon conveyance to the homeowner, and shall be maintained until the full amortization of the homeowner's mortgage debt to the PHA. The PHA shall enforce the homeowner's obligation to pay amounts sufficient to cover the premiums for fire and extended coverage insurance on the home, but shall in any event carry the insurance out of any available funds, subject to collection from the homeowner. The homeowner shall make payments to the PHA (included in the monthly payments) to cover the cost of the insurance.

(6) *Mortgage Servicing Fees.* The amount of the mortgage servicing fees collected from the homeowner under the promissory note may be retained by the PHA, and utilized as project operating receipts.

(7) *Reports to HUD.* The PHA shall furnish to HUD all information and reports concerning homes conveyed with PHA Homeownership Financing as required by HUD, and at the times required by HUD.

(8) *Repossession of homes.* Where the PHA reacquires a home financed with PHA Homeownership Financing, whether by bidding in the home at foreclosure or by voluntary assignment from the mortgagor, the PHA shall endeavor to market the home to

an eligible Turnkey III homebuyer in accordance with this Subpart.

(b) *Conveyance of home.* When the homebuyer is to obtain ownership as described in § 804.113 or § 804.115, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer:

(1) shall pay the required amount of money to the PHA, and receive a deed for the home, and

(2) if the home is conveyed with PHA Homeownership Financing pursuant to paragraph (a) of this section, shall deliver to the PHA the promissory note and first mortgage required in connection with such financing, and

(3) if the home is conveyed at any time within the five-year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement, shall deliver to the PHA the promissory note and subordinate mortgage required pursuant to § 804.114.

(c) *Remittance of Purchase Price Payments to HUD.* The PHA shall, within 60 days after the end of each fiscal year, remit to HUD all amounts received on account of the purchase prices of the homes ("Purchase Payments") for application to payment of principal and interest on debt incurred by the PHA in connection with development of the project. After payment in full of such development debt, Purchase Payments shall be paid to HUD or applied as directed by HUD. Purchase Payments include all amounts applied to the homebuyer's purchase price from the homebuyer's EHPA and NRMR, any cash paid in by the homebuyer for application to the purchase price, and, where a home has been conveyed with PHA Homeownership Financing, any portion of the mortgage payments attributable to payment of the debt service on the mortgage.

#### § 804.117 Responsibilities of homeowner.

After acquisition of ownership each homeowner shall be required to pay to the PHA or to the homeowners association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas and, (c) such other purposes as determined by the PHA or the homeowners association as appropriate, including taxes and a provision for a reserve. This requirement shall be set out in the planned unit development or condominium documents which shall be recorded prior to conveyance of any of the homes. If the PHA, for any reason, has failed to record such requirement prior to the first conveyance, the PHA shall require each homebuyer, as a precondition for convey-

ance, to contract with the PHA at settlement to make such payments. Such agreement shall be enforceable by the PHA or the homeowners association.

#### § 804.118 Homeowners association—planned unit development (PUD).

If the development is organized as a planned unit development:

(a) *Ownership and maintenance of common property.* The common areas, sidewalks, parking lots, and other common property in the development shall be owned and maintained as provided for in the approved planned unit development (PUD) program except that the PHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 804.112(d)).

(b) *Title restrictions.* The title ultimately conveyed to each homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other owners. The homeowners association shall have the right and obligation to enforce such restrictions and encumbrances and to assess owners for the cost incurred in connection with common areas and property and other responsibilities.

(c) *Votes in association.* There shall be as many votes in the association as there are homes in the development, and, at the outset, all the voting rights shall be held by the PHA. As each home is conveyed to the homebuyer, one vote shall automatically go to the homeowner so that, when all the homes have been conveyed, the PHA shall no longer have any interest in the homeowners association.

(d) *Voting control.* The PHA shall not lose its majority voting interest in the association as soon as a majority of the homes have been conveyed, unless the law of the state requires control to be transferred at a particular time, or the PHA so desires. If permitted by state law, provision shall be made for each home owned by the

PHA to carry three votes, while each home owned by a homeowner shall carry one vote. Under this weighted voting plan, the PHA shall continue to have voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the PHA may transfer voting control to the homeowners when at least 50 percent of the homes have been acquired by the homeowners.

#### § 804.119 Homeowners association—condominium.

If the development is organized as a condominium:

(a) The PHA at the outset shall own each condominium unit and its undivided interest in the common areas;

(b) All the land, including that land under the housing units, shall be a part of the common areas;

(c) The homeowners association shall own no property but shall maintain and operate the common areas for the individual owners of the condominium units except that the PHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 804.112(d));

(d) The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the units to the value of all units and shall be fixed when the development is completed. This percentage shall determine the homeowner's liability for the maintenance of the common areas and facilities;

(e) Each homeowner's vote in the homeowners association shall be identical with the percentage of undivided interest attached to his unit; and

(f) The PHA shall not lose its majority voting interest in the association as soon as units representing 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the PHA so desires.

For voting purposes, until units representing 75 percent of the value of all units have been acquired by homeowners, the total undivided interest attributable to the homes owned by the PHA shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the PHA shall continue to maintain voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the PHA may transfer voting control to the homeowners when units representing at least 50 percent of the value of all units have been acquired by the homeowners.

#### § 804.120 Relationship of homeowners association to HBA.

The HBA and the PHA may make arrangements to permit homebuyers to participate in homeowners association matters which affect the homebuyers. Such arrangements may include rights to attend meetings and to participate in homeowners association deliberations and decisions.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 14, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-36073 Filed 12-27-78; 8:45 am]



**THURSDAY, DECEMBER 28, 1978**

**PART IX**



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**DEPARTMENT OF  
TRANSPORTATION**

**Federal Aviation  
Administration**

■

**LIGHT TRANSPORT  
AIRPLANE  
AIRWORTHINESS REVIEW**



[4910-13-M]

## DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

(14 CFR Parts 23, 25, and 135)

(Docket No. 18600; Notice No. 78-17)

## LIGHT TRANSPORT AIRPLANE AIRWORTHINESS REVIEW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing a new Regulatory Review.

SUMMARY: This notice: (1) announces the Light Transport Airplane Airworthiness Review; (2) announces the availability of FAA proposals; and (3) invites interested persons to comment on those proposals or to submit counter proposals for consideration at a Light Transport Airplane Airworthiness Review Conference. The objective of the Review is to develop airworthiness standards for multiengine airplanes having a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds.

DATES: The following dates are targeted for the Review:

- Release Compilation of FAA proposals: December 1978.
- Announce forum and conference sites and dates: January 1979.
- Hold discussion forum on FAA proposals: March 1979.
- Hold review conference: May 1979.
- Issue Notice of Proposed Rule Making: December 1979.
- Comments on Notice due: March 1980.
- Issue final rule: December 1980.

ADDRESS: The compilation of FAA proposals may be requested now, and will be available at the following address. Federal Aviation Administration, Flight Standards Service, Airworthiness Review Branch, (AFS-910), 800 Independence Ave., S.W., Washington, D.C. 20591

## FOR FURTHER INFORMATION CONTACT:

Thomas E. McSweeney, Airworthiness Review Branch, (AFS-910), Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591; telephone: 202-755-8714.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

Current airworthiness standards exist for two basic designations of airplanes: Part 23 for airplanes 12,500 pounds or under having nine or less passenger seats and Part 25 for transport category airplanes. Commuter

airline and air taxi operations in the United States, which have grown substantially in recent years, have demonstrated a need for airplanes which are not fully transport category but exceed the size limitations of Part 23.

## THREE PHASE PROGRAM

Recognizing the need for improved standards for airplanes intended for these operations, the Administrator has initiated a three-phase program. The first phase was the issuance of revised Part 135, "Air Taxi Operators and Commercial Operators," on September 26, 1978 (43 FR 46742; October 10, 1978). This action aligned the rules for these operations more closely with those of Part 121, "Certification and Operations: Domestic Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft." The second phase was the issuance of Notice No. 78-14, "Airworthiness Standards: Reciprocating and Turbo-propeller Powered Multiengine Airplanes," on September 28, 1978 (43 FR 46734; October 10, 1978). That notice proposed an increase in approved takeoff weights and passenger seating capacities for small airplanes. The third phase is the Light Transport Airplane Airworthiness Review. This Review contemplates the development of a new Part 24 of the Federal Aviation Regulations which will provide a separate set of airworthiness standards for multiengine airplanes that have a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds.

Part 24 airworthiness standards are not necessarily meant to be made up of existing Part 23 or Part 25 rules. However, the airworthiness rules which exist for Part 23 and Part 25 category airplanes and appropriate portions of Appendix A of Part 135 can serve as a foundation for the proposed Part 24 requirements with appropriate modifications as suggested by interested persons.

## FAA PROPOSALS

The FAA wishes to obtain the participation of all interested persons in resolving the regulatory issues that may be involved. The most effective procedure for attaining that objective is the Light Transport Airplane Airworthiness Review announced in this notice and the dialogue that will take place during the associated discussion forum and review conference.

A compilation of FAA proposals for a new Part 24 of the Federal Aviation Regulations has been prepared and is being made available to any interested person who requests a copy and to those who have participated in a previous FAA Regulatory Review. This

compilation does not represent a final FAA position but is presented as a medium for encouraging public comments to aid in developing a notice of proposed rule making for Light Transport Airplane Airworthiness Standards. Interested persons are invited to review the FAA proposals so that they may be discussed at a forum which will be held in March 1979 before the May 1979 Conference when formal written submissions will be considered.

## SCOPE OF THE REGULATORY REVIEW

The scope of the Light Transport Airplane Airworthiness Review Program is limited to those proposals which are appropriate for the development of airworthiness standards for multiengine airplanes having a suggested maximum of about 30 passenger seats, excluding any pilot seat, and with a gross weight of about 35,000 pounds. Existing airworthiness standards for Part 23 and Part 25 category airplanes and appropriate portions of Appendix A of Part 135 serve as a foundation for the Part 24 proposals. However, new or additional standards believed to be appropriate are within the scope of the review and should be submitted.

## INITIAL PUBLIC MEETINGS

Because of the magnitude of this Review, a forum will be held in March 1979 so that interested persons have the opportunity to receive any clarification needed of the FAA proposals. At this forum, only discussion and clarification of FAA proposals will be entertained. There will be no decision-making and counter proposals will not be considered. A Review Conference will be held during May 1979. Formal comments, proposals and counter proposals will be discussed during this conference.

Specific information about dates and locations of the forum and conference will be announced in a notice to be published in the FEDERAL REGISTER in January 1979. Included in that notice will be information regarding the written submissions for the Conference, including the number of copies required, their screening for acceptability and their entry into the docket at the conference. A description of the content and format for written submissions is presented in this notice for advance information for interested persons to prepare for the conference to be held in May 1979.

## IMPROVING GOVERNMENT REGULATIONS

To implement the President's policy on improving government regulations, agencies must consider alternative ways to deal with a problem and an analysis of the economic consequences of each alternative. Thus, it is requested that each FAA proposal addressed

and each proposal submitted be supported by available economic data relative to the costs and benefits of that proposal. Nonquantifiable impacts should also be stated as fully as possible.

## REQUIRED FORMAT AND INFORMATION

The FAA has found during past Regulatory Review Programs that the processing of regulatory proposals is greatly facilitated when they are submitted in standard format and contain certain basic information.

The Appendix to this notice contains a sample of the format that should be used and includes several clerical guidelines.

Each submitted proposal or comment on an FAA proposal should contain at least the following information:

- (a) The full name or title of the proponent, or an appropriate acronym.
- (b) The FAR section affected.
- (c) The specific regulatory language proposed to attain the objective sought.
- (d) The language of the rule or rules from which the proposal is made.
- (e) An explanation and justification of the proposal, including answers to the following questions:
  - (1) What is the background?
  - (2) Why is the proposal necessary?
  - (3) What data, reports, records, etc., support the proposal?
  - (4) What is probable impact (if any) on the environment, energy consumption, safety, and the traveling public?
  - (5) Each FAA proposal and submitted proposal should be assessed for its

economic impact. This assessment should include a comparison of the costs associated with Parts 23 and 25, the FAA proposal, and any submitted proposal. These costs should be identified by such categories as design, testing, prototype, production, operating, etc. Where appropriate, these costs should be further identified as initial (one-time), recurring, and revenue loss or gain.

When more than one proposal is submitted to attain the objective sought, the information in (f) above may be stated in one of the proposals and cross referenced in the others.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), Sec. 6(c)), Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 21, 1978.

LANGHORNE M. BOND,  
Administrator.

## APPENDIX—FORMAT FOR PROPOSALS

The following format below should be used in developing proposals, counter proposals and comments for consideration during the Light Transport Airplane Airworthiness Review Conference. In addition, each proposal should be submitted on a separate page. The text should be within margins not more than 6½ inches wide nor more than 9 inches long so that it can be printed on 8×10½ inch paper.

## SAMPLE FORMAT

Proposal: (Leave Blank).

From: (Name or Organization).  
Index: (Leave Blank).  
FAR: § 24.23(b)(2).  
Subject: Load Distribution Limits.  
Current Rule: § 23.23, 25.23, (Part 135, Appendix A, if applicable—.

## COMMENTS OR COUNTER PROPOSAL ON FAA PROPOSAL

Revise § 24.23(b)(2) to read as follows:

§ 24.23 Load distribution limits.

(b) . . . . .  
(2) (Insert proposed language here)

Explanation and justification: (Explain why the proposed change is necessary and, where applicable, include the following information:

- (1) What is the background?
- (2) Why is the proposal necessary?
- (3) What data, reports, records, etc., support the proposal?
- (4) What is the probable impact of the environment, inflation, energy consumption and the traveling public?
- (5) What is the economic impact affecting the manufacturers, the operators or both? Where possible, this should consider the initial cost of implementing the normal recurring cost and the anticipated revenue loss incurred.]

(FR Doc. 78-36066 Filed 12-27-78; 8:45 am)



THURSDAY, DECEMBER 28, 1978

PART X



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**DEPARTMENT OF  
TRANSPORTATION**

**Coast Guard**

■

**ELECTRICAL SYSTEMS**

Registered  
Federal Property



[4910-14-M]

## DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 183]

[CGD 78-090]

## ELECTRICAL SYSTEMS

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

**SUMMARY:** The Coast Guard has learned that the present requirements for placement of overcurrent protection do not consider manufacturing limitations on locating overcurrent protection devices directly at the source of power for a conductor. Because it would often be impractical to physically locate a circuit breaker right at the source of power, the Coast Guard proposes to allow a jumper conductor up to 7 inches long to be used. Also, where it is physically impractical to locate the overcurrent protection within 7 inches of the source of power, this proposed amendment allows the overcurrent protection to be up to 40 inches from the source of power, providing the conductor is protected from physical damage by being inside a sheath or in an enclosed box. The proposed amended regulations will provide a more practical application of minimum safety standards to recreational boating without adversely affecting boating safety.

**DATE:** Comments must be received on or before: Feb. 12, 1979.

## FOR FURTHER INFORMATION CONTACT:

Mr. Lars E. Granholm, Office of Boating Safety (G-BBT), U.S. Coast Guard, Room 4314, Department of Transportation, Trans Point Building, 2100 V Street SW., Washington, D.C. 20590 (202-426-4027).

## SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice (CGD 78-090) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons. No public hearing is planned but one may be held at a time and place to be set in a later notice in the **FEDERAL REGISTER** if requested in writing by an

interested person raising a genuine issue and desiring to comment orally.

## DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Mr. Lars E. Granholm, Project Manager, Office of Boating Safety and Ms. Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

## DISCUSSION OF THE PROPOSED AMENDMENT

Publication of the final rule for 33 CFR Part 183, Subpart I, in the **FEDERAL REGISTER** took place on January 31, 1977. During the past few months the Coast Guard has received communications from the manufacturers of boats, gasoline powered marine engines, and electrical components. The communications indicate that the requirements for the placement of overcurrent protection devices at the source of power for a conductor or at the origin of a circuit is impractical in many situations. The Coast Guard has solicited written comments from various industry and standards organizations to evaluate the problem described above. That information has been considered with respect to the possible effects on persons subject to these regulations. The proposed amendment which follows was developed from that information.

## OVERCURRENT PROTECTION

Paragraph 183.455(b) specifies that overcurrent protection devices must be located at the source of power for a conductor or at the origin of a circuit. The information supplied to the Coast Guard indicates that it is often impractical to physically locate a circuit breaker or fuse directly at the source of power or at the origin of a circuit, generally a terminal, where a conductor or circuit receives its power. Accordingly, the Coast Guard proposes to amend the requirements for placement of overcurrent protection devices by allowing up to seven inches of jumper conductor between the source where a conductor or circuit receives its power and the overcurrent protection. The seven inches of jumper conductor is not a pigtail, as defined in § 183.402. Therefore, it must meet all the requirements in Subpart I as they apply to conductors. The jumper conductor is still required to be protected from overloading by a fuse or circuit breaker. The only potential hazard introduced by allowing the relocation of the overcurrent protection device is shorting to ground due to physical damage to the jumper conductor insulation. However, since these jumper conductors are generally located in protected areas such as junction boxes, control boxes, dashboards, and

similar enclosures, the probability of physical damage is considered to be insignificant.

The seven inch jumper conductor would provide relief for the majority of electrical systems installations. But, in other situations, such as long jumper conductors in breaker panels or supply conductors between the solenoids and engine starting motors, it is impractical to locate the overcurrent protection within seven inches of the source of power. For these conductors, the Coast Guard has determined that the overcurrent protection should be allowed to be placed up to 40 inches away from the source of power. The distance will be measured along the length of the jumper conductor. The jumper conductor must meet all the requirements of Subpart I as they apply to conductors.

By allowing such a jumper conductor to be 40 inches long, there is an increased potential for physical damage. Accordingly, the Coast Guard is requiring that a jumper conductor longer than seven inches have a protective sheath along its entire length, unless the jumper conductor is located inside a junction box, control box, enclosed electrical panel, or similar enclosure which protects the jumper conductor. The 7 inch and 40 inch lengths were determined after evaluating comments from voluntary standards and industry organizations. It is the intent of these regulations that the overcurrent protection should be placed as close to the source of power as practicable. However the proposed § 183.455(b)(1) and (3) will allow latitude for placement of overcurrent protection.

The Coast Guard proposes to delete subparagraph 183.455(b)(2). This subparagraph requires overcurrent protection at a point where a conductor size is reduced to a smaller gauge. However, this requirement is redundant because the point where a conductor is reduced in size, i.e. connected to another of a lesser amperage rating, is considered to be the new source of power for the lower rated circuit and in this case a requirement for overcurrent protection is already provided for in subparagraph 183.455(b)(1).

This proposal has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9583, March 8, 1978). A draft evaluation has been prepared, and has been included in the public docket.

In consideration of the foregoing, the Coast Guard proposes that in Part 183 of Chapter I of Title 33, Code of Federal Regulations, § 183.455 be revised to read as follows:

§ 183.455 Overcurrent protection: General.

(b) A manually reset, trip-free breaker or fuse must be—

(1) At or within seven inches of the source of power for each conductor, measured along the conductor;

(2) At the origin of a circuit if the circuit breaker or fuse has a current rating that prevents overloading of the smallest conductor in the circuit;

(3) At or within 40 inches of the source of power for each conductor, measured along the conductor, provided the conductor is protected from physical damage throughout the distance between the source of power and the required circuit breaker or fuse by a sheath or enclosure such as a junction box, control box, or enclosed panel.

(85 Stat. 215 (46 U.S.C. 1454); 49 CFR 1.46(n)(1).)

Dated: December 20, 1978.

J. B. HAYES,  
Admiral, U.S. Coast Guard  
Commandant.

[FR Doc. 78-36133 Filed 12-27-78; 8:45 am]



**THURSDAY, DECEMBER 28, 1978  
PART XI**



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**DEPARTMENT OF  
HOUSING  
AND URBAN  
DEVELOPMENT**

■  
**ENERGY AUDITS AND  
CONSERVATION  
MEASURES; INDIVIDUAL  
METERING UTILITIES**

**PHA-Owned Projects—Project  
Management—Utilities**

**Register  
Federal Project**



[4210-01-M]

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENTOffice of Assistant Secretary for Housing—  
Federal Housing Commissioner

[24 CFR Part 865]

[Docket No. R-78-601]

PHA-OWNED PROJECTS—PROJECT  
MANAGEMENT—UTILITIESSubpart C—Energy Audits and Energy  
Conservation MeasuresAGENCY: Department of Housing  
and Urban Development (HUD).

ACTION: Proposed Rule.

**SUMMARY:** The Department is proposing to add a new Subpart C—Energy Audits and Energy Conservation Measures to 24 CFR Part 865 that will require all public housing agencies (PHAs) to conduct energy audits and to accomplish energy conservation measures according to the period required to accumulate net savings in the amount of the initial cost of the energy conservation measure ("pay-back period"). Other energy conservation methods are also specified.

DATE: Comments due January 29,  
1979.

**ADDRESSEES:** Interested persons are invited to participate in the making of these proposed rules by submitting written comments suggestions and views to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Communication should identify the subject matter by the above title, docket number, and date of publication. All relevant material received on or before the date specified above will be considered before adoption of the Final Rule. A copy of each written communication will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION  
CONTACT:

Richard M. Ulf, Chief, Maintenance Operations Branch, Office of Associated Housing Management, HUD, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-5840. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The proposed subpart will further implement HUD policy with respect to energy conservation in Public Housing Agency (PHA) owned housing projects. For a number of years HUD has the dual objectives of conserving energy in support of National goals while at the same time minimizing the cost of the utilities that must be covered by payments from public housing

tenants and Federal operating subsidies. In addition to providing technical assistance to PHAs, HUD previously has designated energy conservation improvements as a priority for funding under the Modernization Program. Reduction in energy consumption was also the objective of the requirement in Subpart D, Utilities, 24 CFR Part 865 for individual metering of utilities where cost-effective. This new subpart is intended to involve all PHAs in a total program for energy conservation.

The proposed regulation will require as the first step that PHAs review the elements of their buildings that have a potential for energy conserving improvements. In keeping with the terminology established by the Department of Energy (DOE) this review process is called an energy audit. (HUD proposes to use DOE terminology and, to the extent feasible, existing DOE terminology in the area of energy conservation.)

Energy audits are required for specified energy conservation measures that HUD and DOE have agreed have the greatest potential for energy savings and cost-effectiveness. For application in PHA-owned housing projects, the DOE list of potential energy conservation measures have been tailored to fit the special conditions in public housing projects. The regulation incorporates one list of energy conservation measures, considered applicable to all types of housing, that are mandatory for coverage in all energy audits. A second list is optional and recommended for coverage, where appropriate.

The objective of the required energy audits is to determine the cost-effectiveness and the order of priority applicable in funding energy conservation measures. In general, the DOE analysis methodology is specified; however, to simplify energy audits procedures, rather than use the present value method specified by DOE, HUD proposes that in performing energy audits, PHAs will use the "pay-back" period. The "pay-back" period, in this regulation, is defined as the number of years required to accumulate net savings in the amount of the initial cost of the energy conservation measure. HUD believes that for the purpose of establishing funding priorities the energy audit can ignore discount rates and anticipated energy cost increases. By doing so, PHAs will be able, in many cases, to make the necessary calculations without expert assistance. The benefit/cost analysis specified in § 865.404 will continue to be utilized in determining the cost-effectiveness of individual metering.

While it may be necessary for some PHAs to engage consultants to conduct energy audits covering the more complicated energy conservation measures,

HUD believes that, for many projects, PHAs will be able to audit the less complicated measures, such as increasing insulation, with their own staff and the help of local suppliers and energy officials.

Funding for energy conservation measures will depend on the availability of PHA operating funds and Modernization Program funds. This proposed subpart requires only that, when funds are available, the PHA shall accomplish the energy conservation measures in the order of priority determined by the energy audits. HUD plans that concurrently with the issuance of this proposed rule the final rule pertaining to individual metering of utilities, Subpart D, 24 CFR Part 865, will be modified by publication of a proposed rule making it consistent with this Subpart.

This subpart further will require that all appliances procured by PHAs be of the highest energy efficiency. HUD believes that most, if not all, appliance manufacturers produce high efficiency models and that PHAs should procure these models.

This subpart also requires that PHAs follow operating practices directed to maximum energy conservation including limiting the maximum temperature of domestic hot water temperature of 120 degrees. While many PHAs have already adopted these energy saving practices, it is important that all PHAs do the same.

A finding of inapplicability respecting Section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

It is therefore proposed that the following new Subpart C be added to Title 24, Part 865.

Subpart C—Energy Audits and Energy Conservation  
Measures

- Sec.  
865.301 Purposes.  
865.302 Applicability.  
865.303 Definitions.  
865.304 Requirements for energy audits.  
865.305 Energy conservation measures.  
865.306 Optional energy conservation measures.  
865.307 Order of funding.  
865.308 Funding.  
865.309 Energy conservation equipment.  
865.310 Energy conservation practices.  
865.311 Compliance schedule.

AUTHORITY: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart C—Energy Audits and Energy  
Conservation Measures

## § 865.301 Purposes.

The purpose of this subpart is to implement HUD policies in support of national energy conservation goals by reducing energy consumption, with consequent reduction of operating costs, of PHA-owned housing projects (except Section 8) assisted under the United States Housing Act of 1937, as amended, (the Act) by requiring that PHAs conduct energy audits and undertake certain cost-effective, energy conservation measures. Energy audits will determine what energy conservation measures will be cost-effective and will establish priorities for funding those measures found to be cost-effective.

## § 865.302 Applicability.

The provisions of this part apply to all PHAs with PHA-owned housing projects, including Mutual Help and Turnkey III. No PHA-leased project or Section 8 Housing Assistance Payments Program projects including PHA-owned Section 8 projects are covered by this subpart.

## § 865.303 Definitions.

(a) Energy audits means a process, carried out in accordance with this Subpart which identifies and specifies the energy and cost savings which are estimated to result from installing or accomplishing an energy conservation measure.

(b) Energy conservation measures mean physical improvements of modifications that, if undertaken to a building or facility, or its equipment, are likely to reduce the cost of energy in an amount sufficient to recover the installation costs in a period no longer than 15 years or the useful life of the measure which ever is less. Examples of energy conservation measures are shown in § 865.304 and 865.305.

(c) "Pay-back" period means the number of years required to accumulate net savings to equal the cost of an energy conservation measure.

## § 865.304 Requirements for energy audits.

All PHAs shall complete an appropriate energy audit for each PHA-owned project under management in accordance with the schedule specified in § 865.311. Energy audits shall be conducted by PHA personnel or consultants as appropriate. Energy audits shall analyze all of the energy conservation measures contained in § 865.305 that are pertinent to the type of buildings and equipment operated by the PHA. The objective of each audit shall be to determine the period of time needed to recover the cost of the energy conservation measures analyzed. In making this computation, the

estimated cost of accomplishing each energy conservation measure shall be divided by the net annual savings estimated for the measure to determine the period, in number of years, needed to recover the cost through savings.

Example:

1. The existing ceiling insulation in a building has a value of R-11. By adding additional insulation to a value of R-22, the annual savings in heating costs will amount to \$1000 per year.

2. The cost of installing the additional insulation is estimated to be \$7500.

3. The "Pay-back" period is:

$$\$7500 \div \$1000 = 7.5 \text{ years}$$

## § 865.305 Energy conservation measures.

PHAs shall conduct an energy audit covering all of the following energy conservation measures except those measures that are not appropriate for the building types or equipment operated by the PHA:

(a) Installation of individual utility meters. (Benefit/cost analysis will continue to be made in accordance with § 865.404.)

(b) Other measures.

- Ceiling insulation.
- Insulation of bare hot water or steam pipes.
- Caulking and sealants in building joints.
- Weatherstripping for doors and windows.
- Clock thermostats for units with individual heating controls.
- Exterior insulation for hot water heaters located in unheated spaces.
- Insulation for forced air ducts in unheated spaces.
- Storm windows or replacement of single glazed windows with double glazed windows.
- Replacement of incandescent fixtures in public spaces with higher efficiency lighting.
- Flow restrictors for hot water lines to shower heads or faucets.
- Thermostatic radiator valves.
- Floor insulation over unheated crawl spaces.

In order to support the use of measures other than checkmeters, the PHA must demonstrate to the satisfaction of HUD that such other measures are more cost-effective.

§ 865.306 Optional energy conservation  
measures.

Coverage of the following energy conservation measures, in making energy audits, is optional but PHAs are encouraged to proceed with coverage of these measures if there is reason to believe, based upon age of equipment, type of buildings, etc., that they may be cost-effective:

- (a) Exterior wall insulation.
- (b) Improved burners for oil-fired heating equipment.
- (c) Improved boiler controls for central, group or building heating plants.
- (d) Solar energy systems.

NOTE.—The pay-back period for these systems shall be calculated by multiplying the

amount of the estimated net savings by two. This is because solar energy is renewable and because anticipated costs increases in non-renewable energy are not to be considered in calculating their pay-back period.

(e) Separate boilers for domestic hot water in central, group or building heating plants.

(f) Heat pumps to replace existing electric resistance heating systems.

(g) Capacitors, peak load controllers, time clock controls and other equipment that will lower the cost of electricity.

## § 865.307 Order of funding.

Within the funds available to a PHA, energy conservation measures will be accomplished in the order of "pay-back" periods, with those funded first that have the shortest "pay-back" periods. Exceptions to this order of funding may be approved by the HUD Field Office Managers in the event that an energy conservation measure with a short "pay-back" period will cost more than the funds available to the PHA.

Example: By means of an energy audit of a PHA-owned project, a PHA determines the following order of funding for energy conservation measures.

| Energy Conservation Measures   | "Pay-Back" Period (years) |
|--------------------------------|---------------------------|
| Weatherstrip doors .....       | 1.5                       |
| Ceiling insulation .....       | 4.6                       |
| Electric checkmeters .....     | 5.2                       |
| Clock thermostats .....        | 5.7                       |
| Storm windows and doors .....  | 7.1                       |
| Improved boiler controls ..... | 10.3                      |
| Solar hot water heaters .....  | 14.7                      |

The PHA shall accomplish these energy conservation measures in the order listed, to the extent funds are available.

## § 865.308 Funding.

The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a Modernization Program or for funding from any available Development Funds for projects for which actual development cost has not yet been determined.

## § 865.309 Energy conservation equipment.

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only:

- (a) Gas cooking ranges equipped with automatic electric ignition in lieu of standard pilot lights.



(b) Gas furnaces and space heaters equipped with automatic electric ignition and automatic flue dampers.

(c) Electric refrigerators, cooking ranges and domestic hot water heaters which were of the highest efficiency offered by a manufacturer for the type and size required, unless a life-cycle cost analysis determines that the less efficient model is more economical over the life of the appliance.

(d) New and replacement space heating thermostats which have been factory set for a maximum temperature of no more than 75°F.

#### § 865.310 Energy conservation practices.

In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation. Such practices shall include, but not be limited to, the following:

(a) The temperature of domestic hot water at the taps shall not exceed 120°F.

(b) All standing pilot lights in gas furnaces or space heaters shall be extinguished during the non-heating season.

#### § 865.311 Compliance schedule.

The energy audits required in § 865.303 shall be completed as a part of a PHAs first Modernization Program approved by HUD after the effective date of this subpart, except programs approved on a emergency bases or no later than 36 months after the effective date of this part, whichever is sooner. The energy conservation measures determined to be cost-effective shall be accomplished as soon as funds are available. The requirement for energy conservation equipment specified in § 865.309 shall be effective for all projects provided under Annual Contributions Contract commencing three (3) months after the effective date of this rule.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of congressional review requirements in order to

permit publication at this time for public comment.

Issued at Washington, D.C., October 26, 1978.

MORTON BARUCH,  
Acting Assistant Secretary for  
Housing—Federal Housing  
Commissioner.

[FR Doc. 78-36076 Filed 12-27-78; 8:45 am]

#### [4210-01-M]

[24 CFR Part 865]

[Docket No. R-78-605]

#### PHA-OWNED PROJECTS—PROJECT MANAGEMENT UTILITIES

##### Subpart D—Individual Metering Utilities

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This changes the requirement of 24 CFR 865 pertaining to the installation of individual utility meters in low-income public housing by modifying the requirement for installation of all individual utility meters that a Benefit/Cost Analysis shows to be cost-effective to conform with a proposed new rule on energy audits and energy conservation measures.

DATE: Comments due January 29, 1979.

ADDRESSEES: Written comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. A copy of each comment will be available for public inspection at this address during the regular business hours.

#### FOR FURTHER INFORMATION CONTACT:

Richard M. Ulf, Chief, Maintenance Operations Branch, Office of Assisted Housing Management, HUD 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-5840. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 24 CFR Part 865 Subpart D requires that all PHA-owned housing projects shall be individually metered if the installation of individual gas, electric or water meters would be cost-effective over a 20 year period. While HUD considers the use of individual meters to be a very effective method for conserving energy, it is proposing in 24 CFR Part 865 Subpart C published concur-

rently with this Proposed Rule to enlarge the energy conservation program for PHA-owned housing projects. This enlarged program will require the analysis for cost-effectiveness of several energy conservation measures in addition to individual utility meters. Under Subpart C, PHAs will be required to make energy audits of their projects and to determine the "pay-back" period for each measure analyzed. Energy conservation measures will then be funded and accomplished in the order of the shortest "pay-back" periods. HUD believes that, as a part of this program, individual metering should be treated similar to other energy conservation measures. Consequently, this Proposed Rule amends 24 CFR § 865.408 so that the installation of individual utility meters will be accomplished on a similar basis as other energy conservation measures, except that the benefit/cost analyses will continue to be made in accordance with § 865.404.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the address specific above.

Accordingly 24 CFR Part 865 is proposed to be amended by revising Subpart D as follows:

##### Subpart D—Individual Metering of Utilities

#### § 865.408 Compliance schedule.

(b) Mastermetered projects determined to be cost-effective or conversion to Retail Service or Checkmetering shall be so converted according to their order of priority as specified in § 865.307, as funds become available.

AUTHORITY: Sec. 7(d) of the Dept. of HUD Act, 42 U.S.C. 3535(d).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 26, 1978.

MORTON BARUCH,  
Acting Assistant Secretary for  
Housing, Federal Housing  
Commissioner.

[FR Doc. 78-36265 Filed 12-27-78; 8:45 am]











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## reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

## Rules Going Into Effect Today

FTC—Guide concerning fuel economy advertising for new automobiles, final interim guide amendments ..... 55747; 11-29-78  
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SEC—Provisions for deposits of securities in securities depositories ..... 50869; 11-1-78

## Rules Going Into Effect January 1, 1979

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CSC—Federal employees health benefits program; miscellaneous amendments ..... 52459; 11-13-78

Increase in Government contribution and miscellaneous changes ..... 35018; 8-8-78

CFTC—Dealer options reporting requirements ..... 52467; 11-13-78

Commerce/NOAA—1979 fee schedule for foreign fishing ..... 57148; 12-6-78  
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DOD/Army-Corps of Engineers—Water and related land resources; guidelines for conducting feasibility studies ..... 30222; 7-13-78

DOE/ERA—Certain limited-product refineries located in the State of Alaska; entitlements program ..... 55322; 11-27-78

FERC—Purchased gas cost adjustment ..... 56220; 12-1-78

FCC—Accounting and reporting changes to implement certain findings in rate case 21330; 5-17-78

FMC—Self-policing requirements for section 15 agreements ..... 42757; 9-21-78—46972; 10-12-78

Justice/INS—Nonimmigrant classes; admission of nonimmigrant students for duration of status ..... 54618; 11-22-78

DOT/FRA—Railroad accidents and incidents; biannual adjustment of reporting threshold ..... 51020; 11-2-78

MTB—Carriage by public highway; repair and maintenance of vehicles ..... 41401; 9-18-78

NHTSA—Vehicles manufactured in two or more stages, certification requirements ..... 28814; 7-3-78

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## List of Public Laws

NOTE: A complete listing of all public laws from the second session of the 95th Congress was published as Part II of the issue of December 4, 1978. (Price: 75 cents. Order by stock number 022-003-00960-4 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone 202-275-3030.)

The continuing listing will be resumed upon enactment of the first public law for the first session of the 96th Congress, which will convene on Monday, January 15, 1979.

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# rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325-01-M]

## Title 5—Administrative Personnel

### CHAPTER I—CIVIL SERVICE COMMISSION

#### PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

##### Revocation of Members-of-Family Restriction

AGENCY: Civil Service Commission.

ACTION: Final regulations.

SUMMARY: The Civil Service Commission's regulations are amended to revoke members-of-family restriction repealed by Public Law 95-454.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary Zankowski, 202-632-6817.

Accordingly, 5 CFR 338.201 is revoked.

(Pub. L. 95-454, Section 307(h))

CIVIL SERVICE COMMISSION,  
JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-36351 Filed 12-28-78; 8:45 am]

[6325-01-M]

#### PART 550—PAY ADMINISTRATION (GENERAL)

##### Income Tax Withholding

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Public Law 95-365, approved September 15, 1978, provided for the mandatory withholding of city income or employment taxes from the pay of Federal employees who are residents of certain cities that levy such taxes, but who are employed at Federal activities located outside the city, provided that the city of residence and the employing Federal activity are located in the same State. Previously, such withholding had been voluntary under § 550.361 of this part.

In order to reflect this change in law, the Commission has revised

§ 550.361 to delete the obsolete authorization for voluntary withholding in this situation. As revised, the regulation will authorize agencies to permit employees to make payroll allotments for the payment of (1) State or District of Columbia income taxes when the employee is a resident of the State or District of Columbia, but is employed at a Federal activity outside the State or District of Columbia; and (2) city or county income or employment taxes when the employee is either employed at a Federal activity outside of, or is a resident of, a State other than the State in which the taxing city or county is located.

EFFECTIVE DATE: December 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Betty J. Roth, Bureau of Policies and Standards, Technical Services Staff, Room 3353, Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415, 202-632-6553.

Accordingly, 5 CFR 550 is amended by revising § 550.361 to read as follows:

##### INCOME TAX WITHHOLDING

##### § 550.361 Scope.

When the Secretary of the Treasury has entered into an agreement to withhold income or employment taxes from the pay of employees under sections 5516, 5517, or 5520 of title 5, United States Code, an agency may permit an employee, regardless of his or her tenure, to make an allotment for:

(a) The payment of State or District of Columbia income taxes when the employee is employed outside of, but is a resident in, the State or the District of Columbia;

The payment of city or county income or employment taxes when the employee is employed outside of, or is not a resident in, the State in which the city or county is located.

(5 U.S.C. 5527; EO 10982, 3 CFR 1959-1963 Comp., p. 502, Pub. L. 95-365, Sept. 25, 1978.)

CIVIL SERVICE COMMISSION,  
JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-36353 Filed 12-28-78; 8:45 am]

[6325-01-M]

#### PART 772—APPEALS TO THE COMMISSION

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This document amends the regulations to provide for the continuation of action on and acceptance and processing of appeals by the Merit Systems Protection Board in lieu of the Federal Employee Appeals Authority, the Appeals Review Board, and the Civil Service Commission pursuant to Sections 202 and 203 of Reorganization Plan No. 2 of 1978 (43 FR 36067).

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

James C. Spry, Executive Assistant to the Commissioners, U.S. Civil Service Commission, (202) 632-5556.

SUPPLEMENTARY INFORMATION: The U.S. Civil Service Commission will be redesignated the Merit Systems Protection Board (the "Board") effective January 1, 1979 pursuant to Section 201 of Reorganization Plan No. 2 of 1978 (43 FR 36037). The hearing, adjudication, and appeals functions of the Commission remain with the Board pursuant to Section 202(a) of the plan. The plan provides further, in Section 203, that the Board shall accept appeals from agency actions affected prior to the effective date of the plan and that proceedings then before the Federal Employee Appeals Authority, the Appeals Review Board, and the Commission shall continue before the Board.

Accordingly, 5 CFR Part 772 is amended as follows and shall remain in effect as amended from January 1, 1979 until the regulations of the Board are issued pursuant to the Civil Service Reform Act of 1978 (P.L. 95-454).

a. Subpart A is revised to read as follows:

Subpart A—Authority to Issue Final Decisions on Matters Before the Merit Systems Protection Board

Sec.  
772.101 Appeals Officers.  
772.102 Review Officers.



### Subpart A—Authority To Issue Final Decisions on Matters Before the Merit Systems Protection Board

#### § 772.101 Appeals Officers.

Appeals Officers of the Merit Systems Protection Board (the "Board") are authorized to make and issue final decisions and orders on all matters appealable to the Board except as otherwise provided by law or Board policy.

#### § 772.102 Review Officers.

Review Officers designated by the Board shall, subject to review by any member of the Board on his/her own motion, deny requests to reopen and reconsider decisions of appeals officers of the Board when the moving party fails to establish, pursuant to section 772.310 of this part, a valid basis for reopening the previous decision. The review officer shall, when recommending granting a request for reopening and reconsideration, report to the Board—

(a) The basis for reopening the previous decision;

(b) The issues of fact, law, or both which need to be reconsidered and resolved; and

(c) A recommended final determination of the matters at issue, or the action recommended to resolve the outstanding issues.

#### Subpart C—[Amended]

b. Subpart C is amended by:

(1) Revising the title of subpart C to read "The Board's Appellate Review of Actions Against Employees";

(2) Revising § 772.301 to read:

#### § 772.301 Coverage.

Except as otherwise provided, this Subpart applies to appeals to the Merit Systems Protection Board (hereinafter referred to as the Board) under Subpart A of Part 300 of this chapter, Subpart E of Part 302 of this chapter, Subpart H of Part 315 of this chapter, Subpart B of Part 330 of this chapter, Subpart I of Part 351 of this chapter, Subparts B, C, E, F, and G of Part 352 of this chapter, Subpart D of Part 353 of this chapter, Subparts D and E of Part 531 of this chapter, Subparts B and C of Part 752 of this chapter, and to appeals from adverse suitability determinations under Part 731 of this chapter, from adverse actions effected under Part 754 of this chapter, from decisions of the Bureau of Retirement, Insurance, and Occupational Health on application for disability retirement effected under Part 831 of this chapter, and from decisions of the Bureau of Retirement, Insurance, and Occupational Health on issues of entitlement to rights or benefits by claimants under Parts 831, 870, 871, 890 and 891 of this chapter.

#### §§ 772.302-772.308 [Amended]

(3) Substituting "the Board" for the terms "the Commission", "Federal Employee Appeals Authority", "office of the Appeals Authority", and "Appeals Authority", wherever such terms appear in §§ 772.302 through 772.308;

#### § 772.309 [Amended]

(4) Substituting "appeals officer" for "office of the Appeals Authority" and "Board" for "Appeals Review Board" in § 772.309;

#### § 772.310 [Amended]

(5) Substituting "Merit Systems Protection Board" for "Appeals Review Board" in § 772.310(a);

(6) Substituting "Office of Appeals Review, Merit Systems Protection Board, Washington, D.C. 20419" for "Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415" in § 772.310(c);

(7) Substituting "Board" for "Appeals Review Board" in § 772.310(g); and

#### §§ 772.311 and 772.312 [Revoked]

(8) Striking §§ 772.311 and 772.312.

#### Subpart D—[Amended]

c. Subpart D is amended by substituting "Board" for "Appeals Review Board", "Appeals Authority", "Commission" or "Commissioners" wherever such terms appear.

UNITED STATES CIVIL SERVICE COMMISSION,  
JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-36352 Filed 12-28-78; 8:45 am]

#### [3410-21-M]

#### Title 7—Agriculture

#### SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

#### PART 11—SALES OF AGRICULTURAL COMMODITIES FOR FOREIGN CURRENCIES

#### Subpart A—Regulations Governing the Financing of Commercial Sales of Surplus Agricultural Commodities for Foreign Currencies

#### DELETION OF REGULATIONS

AGENCY: Office of the General Sales Manager, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes regulations applicable to the financing of the sale of surplus agricultural commodities for foreign currencies pursuant to

Agricultural Commodities Agreements entered into under Pub. L. 480, 83d Congress, prior to January 1, 1967. Since these regulations are not applicable to the financing of sales made pursuant to such agreements entered into on or after such date, it has been determined that these regulations no longer need to be set forth in the Code of Federal Regulations. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to such Pub. L. 480 agreements entered into prior to January 1, 1967.

EFFECTIVE DATE: December 29, 1978. See "Supplementary Information."

#### FOR FURTHER INFORMATION CONTACT:

George J. Pope, Office of the General Sales Manager, U.S. Department of Agriculture, 14th and Independence Avenue SW., Room 4085 South Building, Washington, D.C. 20250, Telephone (202) 447-5637.

SUPPLEMENTARY INFORMATION: Since this regulation merely deletes provisions which are not applicable to the current Pub. L. 480 program, I hereby find that compliance with the notice and public participation requirements of E.O. 12044 and 5 U.S.C. 553(b) and the delayed effective date provision of 5 U.S.C. 553(d) is unnecessary.

#### FINAL RULE

#### Subpart A—[Reserved]

Accordingly 7 CFR Part 11, Subpart A, including Appendix A and B, is deleted and reserved. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to Agricultural Commodities Agreements entered into under Pub. L. 480, 83d Congress, prior to January 1, 1967.

(Sec. 101-115, Pub. L. 480, 83d Cong., as amended (7 U.S.C. 1701 et seq.); E.O. 10900, 26 FR 143, as amended.)

Signed at Washington, D.C., on December 28, 1978.

KELLY HARRISON,  
General Sales Manager, Office of  
the General Sales Manager,  
U.S. Department of Agriculture.

[FR Doc. 78-36335 Filed 12-28-78; 8:45 am]

#### [3410-21-M]

#### PART 14—SALES OF AGRICULTURAL COMMODITIES ON CREDIT UNDER LONG-TERM SUPPLY CONTRACTS

#### Deletion of Regulations

AGENCY: Office of the General Sales Manager, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes regulations applicable to the financing of surplus agricultural commodities purchased by importing countries and private trade entities pursuant to Agricultural Commodities Agreements entered into under Public Law 480, 83d Congress, prior to January 1, 1967. Since these regulations are not applicable to the financing of sales made pursuant to such agreements entered into on or after such date, it has been determined that these regulations no longer need to be set forth in the Code of Federal Regulations. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to such Pub. L. 480 agreements entered into prior to January 1, 1967.

EFFECTIVE DATE: December 29, 1978. See "Supplementary Information."

#### FOR FURTHER INFORMATION CONTACT:

George J. Pope, Office of the General Sales Manager, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Room 4085 South Building, Washington, D.C. 20250, Telephone: (202) 447-5637.

SUPPLEMENTARY INFORMATION: Since this regulation merely deletes provisions which are not applicable to the current Public Law 480 program, I hereby find that compliance with the notice and public participation requirements of E.O. 12044 and 5 U.S.C. 553(b) and the delayed effective date provision of 5 U.S.C. 553(d) is unnecessary.

#### FINAL RULE

#### PART 14—[RESERVED]

Accordingly 7 CFR Part 14 is deleted and reserved. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to Agricultural Commodities Agreements entered into under Public Law 480, 83d Congress, prior to January 1, 1967.

(Sec. 101-115, Pub. L. 480, 83d Cong., as amended (7 U.S.C. 1701 et seq.); E.O. 10900, 26 FR 143, as amended.)

Signed at Washington, D.C., on: December 28, 1978.

KELLY HARRISON,  
General Sales Manager, Office of  
the General Sales Manager,  
U.S. Department of Agriculture.

[FR Doc. 78-36336 Filed 12-28-78; 8:45 am]

#### [3410-30-M]

#### CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

#### PART 210—NATIONAL SCHOOL LUNCH PROGRAM

#### Program Management

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the National School Lunch Program regulations to accomplish the following: (1) Places additional regulatory controls on the involvement of food service management companies in the National School Lunch Program. (2) Makes applicable to School Food Authorities the procurement standards which currently apply only to State agencies. This action is being taken to effect better program management and to implement the intent of OMB Circular No. A-102.

EFFECTIVE DATE: This rule shall be effective for contracting and procurement of supplies and services for school year 1979-1980 and thereafter. Existing contracts which extend into school year 1979-1980 may remain in effect for the 1979-1980 school year with notification to the State agency.

#### FOR FURTHER INFORMATION, CONTACT:

Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250 202-447-8130.

#### SUPPLEMENTARY INFORMATION:

#### FOOD SERVICE MANAGEMENT COMPANIES

On January 13, 1978 there was published in the FEDERAL REGISTER (43 FR 1955) a proposed amendment to the regulations to impose requirements upon School Food Authorities entering into contractual agreements with commercial enterprises for the preparation and service of program meals.

Interested persons and groups were given 45 days in which to submit comments, suggestions or objections re-

garding the proposed amendment. A total of 193 comments were received by the close of the official comment period, February 25. Forty-two of these comments fully supported the proposed regulations, stating that more controls on food service management companies involved in the program were necessary.

One hundred fifty-one comments were in objection to one or more of the requirements in the proposed regulations. The respondents' major area of concern regarded the one-year duration for all food service management contracts, prohibition of per-meal management fees, the use of a standard contract, reduction of authority at the local level, and the required use of a cycle menu. In addition, there were several objections to applying the same requirements to food service management companies and vendors. In drafting final regulations all of these sensitive issues have received full consideration, and the final regulations have been modified as follows.

Included in the proposal was a requirement to have State agencies develop a standard form contract for use by School Food Authorities contracting with food service management companies. The standard form contract was to be based upon a model drafted by the Department. Nine objections were received addressing this issue directly, and seven comments were received in objection to contracting regulations in general. School Food Authorities felt that their authority was being reduced because they would not be allowed to write their own contracts.

The respondents contended that food service management companies must provide both a service and a product. They believe the service portion of the food service management contract could not be properly addressed in a standard contract, but it is more suited for a request-for-proposal type of procurement.

The standard contract provision was not included in the regulations to reduce authority at the local level or to impede effective bidding procedures. There are certain basic requirements that need to be included in each contract, and it was determined that the use of a standard contract would be an effective way of implementing these controls. However, in final form these requirements will be included in food service management company contracts through the listing of minimum requirements in the final regulations. The minimum requirements include most of the requirements which were to be contained in the standard contract. This procedure will permit the School Food Authority to write its own contract, providing all of the provisions of the regulations, including



the minimum standards, are contained in the contract. Twenty-seven respondents objected to the mandatory competitive bid procedure, stating that the request-for-proposal type of procurement was preferable. The minimum standards approach will allow the request-for-proposal type of procurement to be utilized at the discretion of the School Food Authority.

The greatest number of comments in objection to a single issue concerned the limitation of contract duration to one year. Ninety-seven comments were in objection to this requirement. As proposed, a School Food Authority would initiate the procurement process each and every year it wished to contract with private enterprises. Respondents objected, stating this provision was considered to be a limitation of local authority; a burden on the School Food Authority since it would increase paper work; and a detriment to food service management company employees' morale because length of employment would be uncertain.

This provision has been modified in final form to be responsive to the comments in objection, but still to allow for open and free competition. The provision for one-year contract duration shall remain; however, options for two yearly renewals will be allowable, and a provision for 60-day termination by either party is mandatory. This would permit the School Food Authority to extend the contract on a yearly basis if the performance and costs were satisfactory. It would also allow the School Food Authority to terminate the contract, should the contractor's performance be unsatisfactory.

Thirty-three of the respondents objected to the requirement that a School Food Authority develop a cycle menu for the entire school year. They stated that strict adherence to a cycle menu would be counterproductive as it would prohibit a contractor from adjusting menus to satisfy the likes and dislikes of children. In addition, it could possibly limit the use of USDA-donated foods since the cycle menu would be prepared well before they knew which foods would be donated by the Department.

To have the School Food Authority prepare menus for the year was not the intent of the proposed regulations. Rather, the intent was to require the School Food Authority to include a cycle menu with the invitation to bid or request for proposal, upon which cost to a School Food Authority could be based. This would permit all interested food service management companies to compete in a fair and equitable manner.

The cycle menu requirement will be retained with clarification because of its value in standardizing procurement and as a management tool. Variations

from the menu will be allowable after the first 21 days of food service with approval of the School Food Authority.

To assist in the development of acceptable menu regulations also require a School Food Authority contracting with a food service management company to establish an advisory board to assist in menu planning.

Objections to the proposed prohibition of management fees on a per meal basis numbered 81. Respondents indicated that per-meal management fees provide an incentive to the contractor to more fully meet the National School Lunch Program goal of increasing participation in the "Type A" lunch, and that if, through good management, the company can encourage increased participation it is appropriate that it be paid for its efforts. This part of the proposal has been changed to allow contracts with the management fee on a per-meal basis. However, cost-plus-a-percentage-of-cost contracts have been prohibited.

Twenty-seven comments were received objecting to the State agency approval of contracts over \$100,000 and the requirement mandating justification to the State agency should the School Food Authority contemplate accepting other than the low bid. The respondents interpreted these requirements as an erosion of authority at the local level. They contend that the local school boards should have the right to write and approve contracts as long as program objectives are being achieved. These requirements have been excluded from the regulations. As stated by nine of the respondents, the \$100,000 figure is very arbitrary, and many schools with large contracts have more experience and expertise in food service management contracts than schools with small contracts. In addition, very few of the State agencies have employees with sufficient experience in the field of food service management contracting to approve contracts.

In lieu of these requirements, the regulations have been changed to require State agencies to provide assistance to any School Food Authority requesting such aid. A copy of all food service management contracts must be forwarded to the State agency for review, and it will be the responsibility of the State agency to review each contract to ensure that all provisions required by these regulations have been included and to conduct on-site reviews of at least 20 percent of all food service management contracts within the State each school year.

The definitions of a "food service management company" and "vendor" were found to be objectionable to nine respondents. Objection was also made to the fact that vendors should be re-

quired to adhere to the same regulations as food service management companies.

In response to these objections the definition of a "food service management company" has been expanded and clarified and the definition of a "vendor" has been removed from the final regulations. The relationship between a School Food Authority and a vendor is product-oriented and as such is adequately addressed in the procurement section of the regulations. Therefore, the minimum standards section does not apply to vendors, and reference to them has been deleted.

#### PROCUREMENT STANDARDS

Currently, the procurement standards in the regulations pertain only to procurement of supplies, equipment, and other services by State agencies. In accord with the extension of Office of Management and Budget Circular A-102 to school districts, this regulation will require adherence at the School Food Authority level. All program School Food Authorities will be affected by this rule, not just those just commercially managed.

Accordingly, Part 210 of Chapter II, Title 7 CFR is amended as follows: 1. In § 210.2, paragraphs (h-1), (h-2), (h-3), (h-4), (h-5), and (h-6) are redesignated as (h-2), (h-3), (h-4), (h-5), (h-6), and (h-7), respectively, and a new paragraph (h-1) is added to read as follows:

#### § 210.2 Definitions.

(h-1) "Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the School Food Authority to manage any aspect of the school food service.

#### § 210.8 [Amended]

2. In § 210.8, paragraph (d) is deleted and reserved.

3. A new § 210.8a is added to read as follows:

#### § 210.8a Food service management companies.

(a) Any School Food Authority (including a State agency acting in the capacity of a School Food Authority) may contract with a food service management company to manage its feeding operation in one or more of its schools. Any School Food Authority contracting with a food service management company shall adhere to the procurement standards set forth in § 210.19a. A School Food Authority that employs a food service management company shall remain responsi-

ble for insuring that the food service operation is in conformance with its agreement under the Program and shall monitor the food service operation through periodic on-site visitations. The School Food Authority shall retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals. The School Food Authority shall maintain applicable health certification and be assured that all State and local regulations are being met by a food service management company preparing or serving meals at a School Food Authority facility. Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. However, contracts which provide for management fees established on a per-meal basis are allowed.

(b) The School Food Authority shall adhere to, and include in any contractual agreement with a food service management company for the management of the program, all the requirements set forth in this section. Such contractual agreements shall expressly provide as a minimum that:

(1) the food service management company shall maintain such records as the School Food Authority will need to support its claim under this part, and shall report thereon to the School Food Authority promptly at the end of each month, at a minimum. Such records shall be available, for a period of 3 years from the date of receipt of final payment under the contract, for inspection and audit by representatives of the State agency, the Department, and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit;

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract;

(3) No payment shall be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the School Food Authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, weight, ingredients, formulation, etc. The Department

shall provide guidance to assist in the development of specifications.

(c) Any School Food Authority contracting with a food service management company shall establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(d) The contract between a School Food Authority and a food service management company shall be of a duration of no longer than one year; and options for the yearly renewal of a contract may not exceed two additional years. All contracts will include a termination clause whereby either party may cancel for cause with 60-day notification.

(e) School Food Authorities shall, in addition to the procurement requirements specified in § 210.19a, adhere to the following when contracting with food service management companies:

(1) The invitation to bid or request for proposal shall contain a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a School Food Authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the School Food Authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the School Food Authority;

(2) Any invitation to bid or request for proposal shall indicate that non-performance shall subject the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The School Food Authority shall indicate these sanctions in accordance with the procurement provision stated in § 210.19(n)(1).

(f) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall accrue only to the benefit of the School Food Authority's feeding operation, and shall be utilized therein.

4. In § 210.14, new paragraphs (b) and (c) are added to read as follows:

#### § 210.14 Special responsibilities of State agencies.

(b) Food service management companies. Each State agency, or FNSRO where applicable, shall review yearly each contract between any School Food Authority and a food service management company to ensure com-

pliance with all the provisions and standards set forth in § 210.8a.

(c) Each State agency, or FNSRO where applicable, shall monitor on-site each year not less than 20 percent of all School Food Authorities who have contracted with a food service management company and may require that all food service management companies that wish to contract for food service with any School Food Authorities in the State must register with the State agency. State agencies, or FNSRO where applicable, shall provide assistance upon request of a School Food Authority to assure compliance with program requirements.

5. § 210.19a is revised to read as follows:

#### § 210.19a Procurement standards.

(a) This section provides standards for use by State agencies and School Food Authorities in establishing procedures for the procurement of supplies including food, equipment, and other services with Program funds: These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with provisions of applicable Federal law and Executive Orders. State agencies or School Food Authorities may use their own procurement regulations which reflect applicable State and local law, rules, and regulations provided that procurements made with Program funds adhere to the standards set forth in this section.

(b) The standards contained in this section do not relieve a State agency or School Food Authority of the responsibilities arising under its contracts. The State agency or School Food Authority is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the Program. This includes, but is not limited to: disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) Each State agency or School Food Authority shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting for payment and expending Program funds. The State agency's or School Food Authority's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall pro-



vide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's or School Food Authority's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of a State agency or School Food Authority, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency or School Food Authority should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) Each State agency or School Food Authority shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency or School Food Authority to avoid purchasing unnecessary or duplicate items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by each State agency or School Food Authority to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for procurements to be performed with Program funds.

(i) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Program. The "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" method of contracting shall not be used.

(j) Formal advertising, with adequate purchasing descriptions, sealed bids, negotiations and public openings shall be the required method of procurement unless negotiation pursuant to subparagraph 4 of this paragraph is

necessary to accomplish sound procurement. However, procurements of \$10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency or School Food Authority, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid;

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency or School Food Authority;

(3) Any or all bids may be rejected when it is in the State agency's or School Food Authority's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations;

(4) Procurements may be negotiated by the State agency or School Food Authority if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm (all contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the State agency, or FNSRO where applicable, for prior approval);

(iii) The aggregate amount involved does not exceed \$10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for highly perishable materials or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by applicable law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(k) Contracts shall be made by State agencies or School Food Authorities only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies or School Food Authorities for negotiated purchases in amounts in excess of \$10,000 shall provide at least the following pertinent information: (1) justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency or School Food Authority to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(n) The State agency or School Food Authority shall include, in addition to provisions to define a sound and complete agreement, the following requirements in all contracts which it awards when the contract costs are to be borne by Program funds:

(1) All contracts in excess of \$10,000 shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts awarded by State agencies or School Food Authorities in excess of \$10,000 shall contain suitable provisions for termination by the State agency or School Food Authority, including the manner in which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded by a State agency or School Food Authority and their contractors or subgrantees having a value of more than \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

(4) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as implemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or School Food Authority shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to the Department;

(5) When required by the Federal grant program legislation, all construction contracts awarded by a State agency or School Food Authority in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as implemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The State agency or School Food Authority shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The State agency or School Food Authority shall report all suspected or reported violations to the Department;

(6) Where applicable, all contracts awarded by State agencies or School Food Authorities in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as implemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of that act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous,

or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation;

(7) Contracts awarded by State agencies or School Food Authorities, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters;

(8) All negotiated contracts (except those of \$10,000 or less) awarded by State agencies or School Food Authorities shall include a provision to the effect that the State agency or School Food Authority, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the Program for the purpose of making audits, examination, excerpts, and transcriptions;

(9) Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857B et seq.). Suspected violations shall be reported by the State agency or School Food Authority in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(o) State agencies or School Food Authorities shall observe their regular requirements and practices with respect to bonding and insurance.

NOTE.—The Food and Nutrition Service has determined that this document does not contain major proposals requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Program No. 10.555, National Archives Reference Services.)

Dated: December 19, 1978.

CAROL TUCKER FOREMAN,  
Assistant Secretary.

(FR Doc. 78-36201 Filed 12-28-78; 8:45 am)

[3410-02-M]

# CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

### Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the rules and regulations to permit the optional use of upward adjustments by handlers in Districts 1 and 3, during the balance of the 1978-79 season, of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

DATES: Effective January 1, 1979, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: On December 6, 1978, notice was published in the FEDERAL REGISTER (43 FR 57156) inviting written comments on a proposed amendment to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 910.100-910.180) currently effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment of said rules and regulation was recommended by the Lemon Administrative Committee, established under the order as the agency to administer its terms and provisions.

Under the order the prorated base of each handler is based upon his average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks



preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that the handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received. The order provides in §910.53(h) that the percentage of adjustment, currently set at not to exceed 50 percent in §§910.53(f)(1) and 910.53(e)(3), may be changed.

The committee reports that, due to the conditions expected to prevail during the balance of the 1978-79 season, the percentage of adjustment permitted should be changed to permit the optional use of upward adjustments by handlers in Districts 1 and 3 of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This added flexibility would be provided by an amendment to §910.53(e)(3) Subpart—Rules and Regulations (7 CFR Part 910.100-910.180).

After consideration of all relevant matters presented, including the proposal in the notice and other available information, it is hereby found that amendment of said rules and regulations is in accordance with the marketing agreement and order and will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the *Federal Register* (5 U.S.C. 553) in that (1) the handling of lemons is now in progress subject to regulated weekly allotment provisions of the order and to be of maximum benefit the provisions of this amendment should become effective at the time specified herein, (2) the recommendation of the committee was made at a public meeting at which all interested parties were afforded an opportunity to attend, and (3) the effective time hereof will not require of handlers any preparation that cannot be completed prior thereto.

Therefore, §910.53 is amended to read as follows:

§910.53 Prorate bases and allotments.

(e) \*\*\*

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to §910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of his average weekly pick: *Provided, however,* that during the period January 1, 1979, through July 31, 1979, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. \*\*\*

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: December 26, 1978, to become effective January 1, 1979.

FLOYD P. HEDLUND,  
Director, Fruit and Vegetable Division,  
Agricultural Marketing Service.

[FR Doc. 78-36383 Filed 12-28-78; 8:45 am]

[3410-34-M]

Title 9—Animals and Animal Products

#### CHAPTER 1—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

##### SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

#### PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE AREA QUARANTINED

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments quarantine the Northern Mariana Islands because of the existence of vectors of splenic or tick fever. This action is of an emergency nature and is deemed necessary to prevent the spread of the disease.

EFFECTIVE DATE: December 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Glen O. Schubert, Chief Staff Veterinarian, Bacterial and Parasitic Diseases, Sheep, Goat, Equine, and Ectoparasites Staff, Room 737, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8322.

SUPPLEMENTARY INFORMATION: These amendments quarantine the

Northern Mariana Islands because of the existence of cattle fever ticks which are vectors of splenic or tick fever. This action is deemed necessary to prevent the spread of the disease. The restrictions pertaining to the interstate movement of cattle and certain materials from quarantined areas as contained in 9 CFR Part 72, as amended, will apply to the quarantined area.

Accordingly, §§ 72.2 and 72.3 of Part 72, Title 9, Code of Federal Regulations, as amended, which quarantined portions of the State of Texas, the Virgin Islands of the United States, the Commonwealth of Puerto Rico and the Island of Guam because of splenic or tick fever in cattle, a contagious, infectious, and communicable disease, or because of the existence of vectors of said disease, are hereby amended in the following respects:

1. In § 72.2, the section heading and the text are amended to read:

§ 72.2 Splenic or tick fever in cattle in Texas, the Virgin Islands of the United States and vectors of said disease in the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Island of Guam: Restrictions on movement of cattle.

Notice is hereby given that the contagious, infectious, and communicable disease known as splenic or tick fever exists in cattle in portions of the State of Texas and the Virgin Islands of the United States. Notice is also hereby given that ticks which are vectors of said disease exist in the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Island of Guam.

Therefore, portions of the State of Texas, the Virgin Islands of the United States, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Island of Guam are hereby quarantined as provided in §§ 72.3 and 72.5, and the movement of cattle therefrom into any other State or Territory or the District of Columbia shall be made only in accordance with the provisions of this part and Part 71 of this chapter.

2. In § 72.3, the section heading and the text are amended to read:

§ 72.3 Areas quarantined in the Virgin Islands of the United States, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Island of Guam.

The entire Territories of the Virgin Islands of the United States and the Island of Guam, the Northern Mariana Islands, and the Commonwealth of Puerto Rico are quarantined.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113,

115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendments impose certain further restrictions of an emergency nature necessary to prevent the spread of splenic or tick fever in cattle, and must be made effective immediately to accomplish their purpose in the public interest.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making them effective before January 29, 1979.

Done at Washington, D.C., this 20th day of December 1978.

NOTE—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044. It has been determined by Dr. J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the introduction of splenic or tick fever from the Northern Mariana Islands into States or Territories of the United States is severe enough to warrant the publication of this quarantine without waiting for public comment. An impact analysis statement is being prepared and will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8695. In addition, this amendment to the regulations covering splenic or tick fever will be scheduled for review under provisions of E.O. 12044.

M. T. Goff,  
Acting Deputy Administrator,  
Veterinary Services.

[FR Doc. 78-35935 Filed 12-28-78; 8:45 am]

[3410-34-M]

#### PART 78—BRUCELLOSIS

##### Subpart D—Designation of Brucellosis Areas, Specifically Approved Stockyards, and Slaughtering Establishments

##### BRUCELLOSIS AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The Animal and Plant Health Inspection Service is amending its Brucellosis Regulations. These amendments update the Brucellosis regulations by providing the current status of various counties and States which have been designated Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, or Noncertified Areas for purposes of interstate movement of cattle and bison from such areas. This action is required because of the change in the Brucellosis status of the areas affected.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Hyattsville, Maryland, Room 805, (301) 436-8713.

SUPPLEMENTARY INFORMATION: The amendments delete the following areas from the list of Certified Brucellosis-Free Areas in § 78.20 and add such areas to the list designated as Modified Certified Brucellosis Areas in § 78.21 because it has been determined that they now come within the definition of a Modified Certified Brucellosis Area in § 78.1(m): Hancock, Jackson, Stone, and Tishomingo Counties in Mississippi, Davidson County in Tennessee.

The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Certified Brucellosis-Free Areas in § 78.20 because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area in § 78.1 (1): Grant County in Arkansas; Leavenworth County in Kansas; Burt and Washington Counties in Nebraska; and Tom Green County in Texas.

Accordingly, §§ 78.20, 78.21, and 78.22 of Part 78, Title 9, Code of Federal Regulations, designating Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, and Noncertified Areas, respectively, are amended to read as follows:

§ 78.20 Certified Brucellosis-Free Areas.

The following States, or specified portions thereof, are hereby designated as Certified Brucellosis-Free Areas:

(a) *Entire States.*

Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington, West Virginia, Wisconsin, Virgin Islands.

(b) *Specific Counties Within States.*

Alabama. Dale, Geneva.  
Arkansas. Baxter, Bradley, Carroll, Cleveland, Columbia, Dallas, Drew, Fulton, Garland, Grant, Jefferson, Marion, Monroe, Montgomery, Newton, Ouachita, Searcy, Sharp, Stone, Union.

Florida. Baker, Bay, Calhoun, Citrus, Dixie, Franklin, Holmes, Leon, Liberty, Monroe, Okaloosa, Orange, Santa Rosa, Seminole, St. Johns, Taylor, Wakulla, Walton.

Georgia. Appling, Atkinson, Bacon, Banks, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, De Kalb, Echols, Effingham, Evans, Fannin, Franklin, Glascock, Glynn, Greene, Habersham, Jeff Davis, Johnson, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Rabun, Richmond, Screven, Stephens, Taylor, Toombs, Treutlen, Twiggs, Upson, Ware, Wayne, Wheeler, White, Wilkinson.

Idaho. Ada, Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Valley, Washington.

Illinois. Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kane, Kankakee, Kendall, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

Iowa. Adair, Allamakee, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Plymouth, Sac, Scott, Shelby, Sioux, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright.



**Kansas.** Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Coffey, Comanche, Decatur, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Johnson, Kearney, Kingman, Kiowa, Labette, Lane, Leavenworth, Logan, Marion, Marshall, Meade, Miami, Mitchell, Ness, Norton, Osborne, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Seward, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Woodson, Wyandotte.

**Kentucky.** Bell, Breathitt, Campbell, Clay, Floyd, Harlan, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Menifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Whitley, Wolfe.

**Mississippi.** Alcorn, Harrison.

**Missouri.** Audrain, Dunklin, Gasconade, Hickory, Lewis, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

**Nebraska.** Banner, Box Butte, Burt, Cheyenne, Dakota, Deuel, Dodge, Douglas, Perkins, Thurston, Washington.

**New Mexico.** Catron, Colfax, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Otero, Quay, Rio Arriba, Sandoval, San Juan, Santa Fe, Sierra, Socorro, Taos, Torrance, Union.

**South Dakota.** Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washaugh, Yankton, Ziebach.

**Tennessee.** Anderson, Blount, Campbell, Carter, Claiborne, Fentress, Grainger, Greene, Hamblen, Hancock, Johnson, Knox, Lake, Lewis, Meigs, Morgan, Perry, Polk, Roane, Robertson, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren.

**Texas.** Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hemphill, Hudspeth, Hutchinson, Irion, Jeff Davis, Kendall, Kerr, Kimble, Lipscomb, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton,

Ochiltree, Pecos, Presidio, Reagan, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Tom Green, Val Verde, Ward, Winkler, Yoakum.

**Utah.** Beaver, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

**Vermont.** Bennington, Caledonia, Essex, Grand Isle, Lamoille, Orange, Rutland, Washington, Windham, Windsor.

**Wyoming.** Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

**Puerto Rico.** Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Canovanas (Loiza), Catano, Cayer, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guaynabo, Guayanilla, Hormigueros, Humacao, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Moravia, Naranjito, Orocovia, Patillas, Penuelas, Ponce, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, Yauco.

#### § 78.21 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

##### (a) Entire States.

Alaska, Louisiana, Oklahoma.

##### (b) Specific Counties Within States.

**Alabama.** Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Etowah, Escambia, Fayette, Franklin, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

**Arkansas.** Arkansas, Ashley, Benton, Boone, Calhoun, Chicot, Clark, Clay, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Faulk-

ner, Franklin, Greene, Hempstead, Hot Springs, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White, Woodruff, Yell.

**Florida.** Alachua, Bradford, Brevard, Broward, Charlotte, Clay, Collier, Columbia, Dade, De Soto, Duval, Escambia, Flagler, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Lucie, Sarasota, Sumter, Suwanee, Union, Volusia, Washington.

**Georgia.** Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Dawson, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Jones, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Randolph, Rockdale, Schley, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Telfair, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren, Washington, Webster, Whitfield, Wilcox, Wilkes, Worth.

**Idaho.** Banock, Bonneville, Cassia, Elmore, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Madison, Oneida, Teton, Twin Falls.

**Illinois.** Jo Daviess, Knox, Massac.

**Iowa.** Adams, Appanoose, Guthrie, Page, Ringgold, Taylor, Wayne.

**Kansas.** Allen, Atchison, Barton, Butler, Cloud, Cowley, Crawford, Dickinson, Elk, Ellis, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Jefferson, Lincoln, Linn, Lyon, McPherson, Montgomery, Morris, Morton, Nemaha, Neosho, Osage, Ottawa, Reno, Rice, Russell, Sedgwick, Stafford, Sumner, Wabaunsee, Wilson.

**Kentucky.** Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmon-

son, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Laclede, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Wayne, Webster, Woodford.

**Mississippi.** Adams, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chicksaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

**Missouri.** Adair, Andrew, Atchinson, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.

**Nebraska.** Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney,

Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Valley, Wayne, Webster, Wheeler, York.

**New Mexico.** Bernalillo, Chaves, Curry, Eddy, Lea, Mora, Roosevelt, San Miguel, Valencia.

**South Dakota.** Jones, Stanley.

**Tennessee.** Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grundy, Hamilton, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Lauderdale, Lawrence, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

**Texas.** Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine,

San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

**Utah.** Box Elder, Garfield.

**Vermont.** Addison, Chittenden, Franklin, Orleans.

**Wyoming.** Lincoln.

**Puerto Rico.** Arecibo, Camuy, Carolina, Gurabo, Hatillo, Isabela, Las Piedras, Naguabo, Quebradillas, San Sebastian.

#### § 78.22 Noncertified Areas.

The following States, or specified portions thereof, are hereby designated as Noncertified Brucellosis Areas:

(a) Entire States. Yellowstone National Park.

(b) Specific Counties Within States. Florida. Highlands, Okeechobee.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132, 21 U.S.C. 111-113, 114a-1, 115, 117, 120, 121, 125, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141, 4 CFR 78.25.)

The amendments impose certain restrictions necessary to prevent the spread of brucellosis in cattle and relieve certain restrictions presently imposed. They should be made effective promptly in order to accomplish their purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective before January 29, 1979.

Done at Washington, D.C., this 21st day of December 1978.

This regulation has not been designated "significant" under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations."

PIERRE A. CHALOUX,  
Deputy Administrator,  
Veterinary Services.

[FR Doc. 78-36043 Filed 12-28-78; 8:45 am]



## Title 10—Energy

## CHAPTER II—DEPARTMENT OF ENERGY

[Docket No. ERA-R-77-15]

## PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

## Amendment to Permit the Pass-through by Service Station Operators of Costs for Vapor Recovery Systems and Increased Service Station Rents; Effective Date

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby provides notice that the final rule permitting retail gasoline dealers to pass through increased costs associated with installation of vapor recovery systems and rent increases, the effective date of which had been suspended, will become effective January 1, 1979.

DATES: Effective January 1, 1979. Comments by February 15, 1979, 4:30 p.m.

ADDRESS: All comments to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-77-15, 2000 M Street, NW., Washington, D.C. 20461.

## FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634-2170.

Chuck Boehl (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2304, Washington, D.C. 20461, (202) 254-7200.

Ben McRae (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 5134, Washington, D.C. 20461, (202) 633-8622.

## SUPPLEMENTARY INFORMATION:

- I. Background
- II. Effective Date
- III. Comments

## I. BACKGROUND

On October 22, 1978, the ERA issued a final rule (43 FR 50662, October 30, 1978), which was to have been effective on December 1, 1978, permitting retail gasoline dealers to pass through

rent increases and the costs of vapor recovery systems incurred since May 15, 1973. This rule was inadvertently issued notwithstanding that the Federal Energy Regulatory Commission (FERC) had not yet determined, in accordance with section 404(a) of the Department of Energy Organization Act, whether it might significantly affect a function within its jurisdiction. Accordingly, on November 24, 1978, we issued a notice (43 FR 55744, November 29, 1978) to suspend the December 1 effective date of the rule in order to permit the FERC until December 20, 1978 to make its determination under section 404(a). The November 24 notice specified that if the FERC determined by that date that the proposed rule would not significantly affect such a function, or if it failed to make a determination by that date, it was our intention to make the rule effective on January 1, 1979.

## II. EFFECTIVE DATE

The FERC has informed us that as of December 20, 1978 it has not determined that the proposed rule might significantly affect a function within its jurisdiction. Therefore, we are hereby making this rule effective January 1, 1979. The final rule is the same as the rule that was issued on October 22, 1978, except for changes to reflect an effective date of January 1, 1979 instead of December 1, 1978. Details on the operation of the rule may be found in the supplementary information section of the October 22 notice.

## III. COMMENTS

Comments on this rule will be accepted through February 15, 1979, as set forth in the October 22, 1978 notice. You should follow the comment procedures set forth in that notice.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385, Federal Energy Administration Act of 1974, Pub. L. 93-275, and amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267).

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective January 1, 1979.

Issued in Washington, D.C., December 22, 1978.

DAVID J. BARDIN,  
Administrator, Economic  
Regulatory Administration.

1. Section 212.83(c)(2)(iii)(E) is amended by adding definitions of "F<sub>t</sub>", "N<sub>s</sub>" and "N<sub>p</sub>" at the end of the "N" factor to read as follows:

## § 212.83 Price rule.

- (c) Allocation of increased costs. . . .
- (2) Formulae. . . .
- (iii) Definitions. . . .
- (E) The "N" factor. . . .

F<sub>t</sub>=the marketing cost increase and is the difference between the cost of marketing covered products in the month of measurement and the cost of marketing covered products in the month of May 1973. "Cost of marketing covered products" means the costs attributable to marketing operations with respect to covered products: *Provided*, That such costs are included only to the extent that they are so attributable under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned and are not included in computing May 15, 1973 prices, in computing increased product costs, or in computing other increased non-product costs. A refiner must prepare a schedule itemizing the principal costs included in this category and describing the accounting procedures by which they are calculated. The amount of marketing cost increase which may be applied to compute maximum allowable prices for covered products is, however, limited to the extent that such marketing cost increases may:

(I) Allow an increase in the prices of No. 2 heating oil and No. 2-D diesel fuel above the prices otherwise permitted to be charged for such products pursuant to the provisions of this part by an amount not in excess of one cent per gallon with respect to retail sales and one-half cent per gallon with respect to all other sales; and

(II)(aa) Allow an increase in the price of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to this part by an amount equal to increased rental cost (as defined in § 212.92) plus vapor recovery system cost (as set forth in § 212.92) plus an amount not in excess of three cents per gallon (for marketing costs not otherwise recoverable under this subpart) with respect to all retail sales; and

(bb) Allow an increase in the price of gasoline, during the 360-day period commencing November 19, 1975, above the prices otherwise permitted to be charged for gasoline pursuant to this part (including paragraphs (I) and (II)(aa) of this definition) by an amount not in excess of two cents per gallon in retail sales in Alaska; and

(III) Allow an increase in the prices of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to the provisions of this part by an amount not in excess of three-quarter cent per gallon with respect to all sales other than retail sales; and

(IV) Allow an increase in the prices of middle distillates above the prices otherwise permitted to be charged for middle distillates pursuant to the provisions of this part (including the foregoing paragraph (I) of this definition) by an amount not in excess of one cent per gallon with respect to retail sales and not in excess of one-quarter cent per gallon with respect to all other sales, except that, with respect to retail sales of aviation fuels by fixed base operators after November 30, 1975, allow an increase in the amount otherwise permitted to be charged for that item pursuant to the provisions of this part by an amount not to exceed four cents per gallon; and

(V) Allow an increase in the prices of residual fuel oil above the prices otherwise permitted to be charged for residual fuel oil pursuant to the provisions of this part by an amount not in excess of three-fourths cent per gallon with respect to retail sales and one-fourth cent per gallon with respect to all other sales; and

(VI) Allow an increase in the price of propane, in sales after September 30, 1975, above the prices otherwise permitted to be charged for propane pursuant to the provisions of this part by an amount not in excess of three cents per gallon with respect to all retail sales except those to the petrochemicals industry, to public utilities, and to synthetic natural gas plants; one cent per gallon with respect to retail sales to the petrochemicals industry, to public utilities, and to natural gas plants and one-half cent per gallon with respect to all other sales; and

(VII) Reflect the total dollar amount of non-product costs attributable to includable amounts of commissions incurred during the period "t" beginning with January 1, 1976 with respect to sales through consignee-agents of the covered product or products of the type "I". The includable amount of commission incurred with respect to each item sold through each consignee-agent is the dollar amount per unit of volume by which the commission in the period "t" exceeds the commission in effect on May 15, 1973: *Provided*, That the includable amount shall be an amount reasonably intended to cover increased non-product costs of the consignee-agent, and that it shall not exceed the amount of the non-product cost price increase that would be permitted if the consignee-agent took title to the product it distributes and were a seller subject to § 212.93(b).

N<sub>s</sub>=the total increased non-product costs attributable to the specific covered product or products of the type "I" computed under "N<sub>t</sub>" for the month preceding the month of measurement ("s") beginning on or after January 1, 1976 but not recovered in

sales of that product during the period "t".

N<sub>r</sub>=the total increased non-product costs attributable to the specific covered product or products of the type "I" computed under "N<sub>t</sub>" for all months through the month two months before the month of measurement ("r") beginning on or after January 1, 1976 but not recovered in sales of that product through the period "t".

2. Section 212.92 is amended by adding, in appropriate alphabetical order, definitions of "increased rental cost" and "vapor recovery system cost" to read as follows:

## § 212.92 Definitions.

"Increased rental cost" means the rent, in terms of cents per gallon, with respect to that portion of real property leased for purposes of retail gasoline sales, paid to an independent lessor for the calendar month preceding the calendar month in which gasoline is sold minus the rent, stated in terms of cents per gallon, with respect to the same real property leased for purposes of retail gasoline sales, paid to an independent lessor for the month of May 1973. For purposes of this paragraph, "independent lessor" means a lessor which is not directly or indirectly controlled by the lessee concerned or by any firm which directly or indirectly controls that lessee.

"Vapor recovery system cost" means the unrecovered installation and purchase cost incurred by the seller since May 15, 1973 with respect to a gasoline vapor recovery system required by a Federal, state, or local governmental authority. For purposes of this paragraph, the cost incurred with respect to a vapor recovery system may be recovered in one month or may be prorated over a period of months. Each seller will be required to establish an accounting method by which vapor recovery costs shall be recovered. Once the method is established, the seller will apply the method consistently over the period for the recovery of costs. A seller may not recover in sales of gasoline a total amount attributable to such costs which exceeds the seller's actual vapor recovery system cost. In any one month, the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and shall be deemed to have been recovered on, each gallon of gasoline sold and for purposes of § 212.83(f) shall be deemed

to have been recovered before all other non-product costs.

3. Section 212.93 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii)(A) and by adding new paragraphs (b)(1)(ii)(C) and (b)(1)(ii)(D) to read as follows:

## § 212.93 Price rule.

(b) . . .

(1) With respect to No. 2 oils and gasoline: (i) in retail sales, a seller may charge one cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section, and, with respect to all other sales a seller may charge one-half cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section to reflect non-product cost increases that the seller incurred after May 15, 1973: *Provided*, That, subsequent to January 1, 1979, such non-product cost increases shall not include those costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

(ii)(A) Beginning with March 1974, in all retail sales of gasoline, a seller may charge two cents per gallon of gasoline in excess of the amount otherwise permitted to be charged for that item pursuant to this section, including paragraph (b)(1)(i) of this section, to reflect increases in non-product costs incurred by the seller concerned since May 15, 1973: *Provided*, That, subsequent to January 1, 1979, such non-product cost increases shall not include those nonproduct costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

(C) Beginning January 1, 1979, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) of this paragraph (b)), which reflects increased rental costs not otherwise recovered.

(D) Beginning January 1, 1979, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) and (C) of this paragraph (b)), which reflects a portion of vapor recovery system cost as set forth in § 212.92 not otherwise recovered.

[FR Doc. 78-36284 Filed 12-26-78; 2:33 pm]



[6320-01-M]

## Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS  
BOARD,

## SUBCHAPTER A—ECONOMIC REGULATIONS

(Regulation ER-1089; Docket 31479;  
Reissuance of Part 263)PART 263—PARTICIPATION OF AIR  
CARRIER ASSOCIATIONS IN  
BOARD PROCEEDINGSAdopted by the Civil Aeronautics  
Board at its office in Washington, D.C.  
December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** Associations will be allowed to represent their members in Board proceedings on the basis of informal authorizations, which need not be provided to the Board except on request. The purpose of the change is to reduce the burden and expense of Associations' participation in Board proceedings. These rules will apply only to associations of direct air carriers.

**DATES:** Effective: January 29, 1979.  
Adopted: December 21, 1978.

FOR FURTHER INFORMATION  
CONTACT:

Richard B. Dyson, Associate General  
Counsel, 1825 Connecticut Avenue,  
N.W. Washington, D.C. 20428, 202-  
673-5442.

**SUPPLEMENTARY INFORMATION:** 14 CFR Part 263 provides that an air carrier association may not participate in Board proceedings to present the views of its members unless: (1) its articles of association authorizing such participation are approved by the Board (§ 263.2), and (2) the Board upon motion or its own initiative grants leave to participate (§ 263.3). The Board will approve the articles of association and grant leave only if each carrier signs and submits a copy of resolution authorizing the association's participation. This requirement can be satisfied by the filing of a power of attorney signed by an authorized officer of each carrier to be represented. Section 263.3(3) provides that, upon motion of any interested person or upon its own initiative, the Board can require the association to withdraw from the case because of significant difference of interest or position among its members.

A Petition for Rulemaking was filed by National Air Carrier Association to relax the authorization requirements. NACA argued that implementation of Part 263 requirements imposed a considerable burden and expense on it

and its members. NACA's petition requested that an attorney representing a member air carrier be permitted to execute a power of attorney on behalf of his client, or allow an officer of the air carrier association to certify that he has communicated with an authorized official of each carrier to be represented, and that each carrier has knowledge of and consents to representation by the association in that proceeding.

In accordance with the petition the CAB proposed to amend 14 CFR Part 263 to allow associations of air carriers to represent their members in Board proceedings on the basis of informal authorizations, which need not be provided to the Board except on request (EDR-345, February 15, 1978, 43 FR 7445, February 23, 1978). The Board also proposed, on its own initiative, to amend the rule to apply only to associations of direct air carriers.

Comments were filed in general support of the proposed amendments by National Air Transportation Association (NATA), United States Tour Operators Association (USTOA), Air Freight Forwarders Association of America (AFFA), American Society of Travel Agents (ASTA), and Commuter Airline Association of America (CAAA). The Air Transportation Association of America (ATA) suggested several modifications of Part 263, the first was to insure that a carrier is fully cognizant of the association's representation and fully consents to it; authorization coming from a duly authorized officer, or from the carrier's internal legal staff, or from outside retained counsel. The second was that a written memorial of all informal authorizations should be prepared by the carrier and forwarded to the association no later than 1 week following that authorization. ATA stated that the Board and the public were entitled to rapid assurance that an air carrier association is conducting its representational activities properly.

The Board has considered both the alternative procedures suggested by NACA and the modifications suggested by ATA, and has concluded that formal filings such as certifications and powers of attorney are unnecessary in this area. Also, the "safeguards" proposed by ATA, if adopted, would place procedural requirements upon associations that we find now to be unnecessary. Considering the sanctions in Federal law and Board regulations (e.g., 14 CFR Part 300) that would apply to any misrepresentations in Board proceedings, additional safeguards do not appear to be necessary.

The Board proposed to amend Part 263 to limit its application to associations of direct air carriers, removing groups such as charter operators from the rule. An air carrier association is

now defined in Part 263 as "an association composed entirely or in part of air carriers which are not exempted from the provisions of Section 412 of the Act in respect of relationships between one another." Various charter regulations adopted by the Board have created a new class of carriers not originally contemplated in the regulation: charter operators who are indirect air carriers of passengers. Although technically they are "air carriers" included in the Part 263 use of the term, their functional relationship to air transportation is comparable to the types of organizations the Part 263 preamble specifically excluded from coverage. The imposition of such a requirement on this segment of the industry's associations could make it much more difficult for the members to make their views known to the Board.

The Board, therefore, in this action is amending Part 263 to require: (1) that an association identify those members whom it is representing in a given proceeding, and (2) that its identification of those members be based on specific authorization with respect to the positions taken, which can be informal and need not be provided to the Board except on request. The Board also is amending Part 263 to limit application to associations of direct air carriers, thus removing groups such as charter operators from the rule.

Accordingly, 14 CFR Part 263, *Participation of Air Carrier Associations in Board Proceedings*, is revised and reissued to read as follows:

PART 263—PARTICIPATION OF AIR  
CARRIER ASSOCIATIONS IN  
BOARD PROCEEDINGS

## Sec.

263.1 Definitions.

263.2 Approval of articles of association.

263.3 Participation.

**AUTHORITY:** Secs. 102, 204, 412, and 1001 of the Federal Aviation Act of 1959, as amended, 72 Stat. 740, 743, 770, and 788, 49 U.S.C. 1302, 1324, 1382, and 1481.

## § 263.1 Definitions.

(a) "Air carrier association" means an association composed entirely or in part of direct air carriers that are not exempted from the provisions of section 412 of the Act in respect of relationships between one another.

(b) "Board proceeding" means any proceedings of the Board to which the Board's procedural regulations apply.

## § 263.2 Approval of articles of association.

An air carrier association created by agreement subject to approval under section 412 of the Act, its officers, or its employees may not participate in

Board proceedings unless its articles of association contain provisions approved by the Board authorizing such participation.

## § 263.3 Participation.

(a) An air carrier association may participate in a Board proceeding only if—

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Board of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Board, and that have specifically authorized the positions taken by the association in that proceedings. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Board.

(b) Upon motion of any interested person or upon its own initiative, the Board may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36356 Filed 12-28-78; 8:45 am]

[6320-01-M]

## SUBCHAPTER B—PROCEDURAL REGULATIONS

(Regulation PR-188; Amdt. 48 to Part 302)

PART 302—RULES OF PRACTICE IN  
ECONOMIC PROCEEDINGSTechnical Changes to Rules  
Governing Enforcement Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.  
December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** The Board amends its rules of practice in enforcement proceedings to insure that the names of certain documents accurately reflect their substance, to provide procedures for review of decisions by administrative law judges granting summary judgment or dismissing enforcement proceedings, and to modify the requirement that complaints be verified.

**DATES:** Adopted: December 21, 1978.  
Effective: December 21, 1978.

FOR FURTHER INFORMATION  
CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5158.

**SUPPLEMENTARY INFORMATION:** The Board's rules of practice governing enforcement proceedings include outmoded terminology that may be confusing to persons trying to understand the rules and certain formal requirements that no longer serve any purpose. The rules also fail to specify procedures for appealing to the Board from action by an administrative law judge granting summary judgment or dismissing an enforcement proceeding. The purpose of these technical and editorial amendments is to correct some of these problems in order to make the rules easier to understand and to follow.

The rules refer to Petitions for Enforcement and to letters dismissing complaints, yet those names do not accurately reflect the nature and purposes of the documents they identify. Since both of these documents serve as notices, we are amending our regulations to call them notices. Also, the requirement that a notice of dismissal must conform to the requirements of § 302.3, regarding the place and formal specifications for filing documents with our Docket Section, is unnecessary and has been deleted. These amendments are editorial, and are not intended to make any substantive changes in the contents or functions of the documents.

In 1976, when we amended the rules to provide for motions for summary judgment and motions to dismiss in enforcement proceedings, we inadvertently failed to specify the procedures for seeking Board review of actions by the administrative law judges granting such motions. Since such actions are dispositive and have the same effect as initial decisions, we are providing that the same review procedures are available. We are also conforming the times provided for initiating Board review of action dismissing a third-party complaint to those provided for review of other dispositive actions by the staff.

In addition, we are modifying the requirement for verification of formal complaints, answers and other pleadings in enforcement proceedings to conform with a recent legislative change. Under 28 U.S.C. 1746, execution under penalty of perjury may be used in place of any sworn declaration or affidavit required by any law or rule of the United States. We are therefore providing that verification may be made under penalty of perjury or under oath.

Since this amendment is administrative in nature, affecting rules of agency procedure, we find that notice and public procedure are unnecessary

and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends Subpart B of Part 302 of its Procedural Regulations (14 CFR Part 302) as follows:

1. We amend § 302.201 by revising the third and fifth sentences so that the section reads:

## § 302.201 Formal complaints.

Any person may make a formal complaint to the Board with respect to anything done or omitted to be done by any person in contravention of any economic regulatory provisions of the act, or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The submission of a formal complaint by a person other than an attorney from the Bureau of Consumer Protection (hereinafter called a third party) shall not in itself result in institution of a formal economic enforcement proceeding and a hearing with respect to the complaint unless and until the Director of the Bureau of Consumer Protection issues a notice instituting an enforcement proceeding with respect to such complaint, or a portion thereof, or the Chief Administrative Law Judge takes such action in accordance with § 302.206(b). A formal complaint, whether filed by a third party or an attorney from the Bureau of Consumer Protection, may be amended at any time prior to the service of an answer to a complaint. Thereafter, such amendment may be filed only upon the grant of a motion filed in accordance with § 302.18, except that permission to amend a third-party complaint after the filing of an answer but before the filing of a notice instituting an enforcement proceeding must be obtained from the Director of the Bureau of Consumer Protection.

2. We revise § 302.202 to read:

## § 302.202 Subscription and verification.

Every formal complaint, supplemental complaint, answer, or other pleading filed in an economic enforcement proceeding shall be signed by the party filing the same, or by a duly authorized officer, agent or attorney of such party. In addition, such documents shall be verified under penalty of perjury or under oath by the person so signing. Such verification shall set forth that the person verifying the document has read the document and the attached exhibits, if any, and knows their contents, and that the matters contained in the document are true or, if stated on information and belief, that he believes them to be true. If the subscription or verification is made by anyone other than the



party filing the document or an officer or attorney of that party, the reason must be stated and that person's power of attorney or other authority to make the subscription or verification must be filed with the document.

3. We amend § 302.204 by revising paragraph (d) to read:

**§ 302.204 Third-party complaints.**

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

4. We revise § 302.205 to read:

**§ 302.205 Procedure when no enforcement proceeding is instituted.**

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Director of the Bureau of Consumer Protection shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.205(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of the Board 30 days after service thereof, unless review of such ruling is requested by the complainant or is initiated by the board in accordance with the provisions of paragraph (c) of this section.

(c) Within 21 days after service of a notice dismissing a complaint in whole or in part pursuant to paragraph (a) of this section, the complainant may file a motion with the Board to review such action. The proceedings on such motion shall be in accordance with § 302.18. Upon conclusion of such proceedings, the Board shall enter an order either affirming the dismissal of the complaint or directing such other action as it deems appropriate. If a complainant does not appeal, the Board may review the action of the Director of the Bureau of Consumer Protection on its own initiative within 30 days after service thereof.

5. We amend § 302.206 by revising the heading and paragraph (a) to read:

**§ 302.206 Commencement of enforcement proceeding.**

(a) Whenever in the opinion of the Director of the Bureau of Consumer Protection there are reasonable grounds to believe that any provision of the act or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto, has been or is being violated,

that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that investigation of any or all of the alleged violations is in the public interest, the Director of the Bureau of Consumer Protection may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint verified by an attorney from the Bureau of Consumer Protection. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Board to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

6. We amend § 302.207 by revising paragraph (a) to read:

**§ 302.207 Answer.**

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with the Board in accordance with § 302.17.

7. We revise § 302.208 to read:

**§ 302.208 Default.**

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Board, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such order as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the Board or administrative law judge may permit late filings of an answer for good cause shown.

8. We amend § 302.212 by adding a new paragraph (c):

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(c) Parties may petition the Board to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

(Sections 204, 1001, 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, 788; 49 U.S.C. 1324, 1481, 1482.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36357 Filed 12-28-78; 8:45 am]

**[6320-01-M]**

(Regulation PR-189; Amdt. 49 to Part 302)

**PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS**

**Number of Copies To File in Enforcement Proceedings**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends Part 302 of the Board Procedural Regulations to reduce the number of copies of pleadings which must be filed in Economic Enforcement Proceedings from an original and 19 copies to an original and 5 copies.

DATES: Adopted: December 21, 1978. Effective: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5158.

SUPPLEMENTARY INFORMATION: The rules of practice now applicable to formal proceedings before the Board, including third-party complaints and enforcement proceedings, require that, unless otherwise specified, an original and 19 copies of each document must be filed with the Docket Section. We are concerned that this multiple copy requirement may inhibit persons with grievances that may involve violations of the Federal Aviation Act or our regulations or orders from filing formal complaints with the Board. Third-party complaints, answers, and similar documents filed in the early stages of an enforcement case are not of great

usefulness to Members of the Board or staff components other than the Bureau of Consumer Protection and the Administrative Law Judges. We do not believe that the Board's need for copies of documents in this type of proceeding is sufficient to justify retaining the present requirement. Therefore, we are amending our regulations to require that only an original and 5 copies of documents need be filed in enforcement proceedings. This smaller number of copies has been allowed without problems in proceedings such as *Eastern Air Lines Enforcement Proceeding*, Dockets 26368, et al. Those who wish to may, of course, continue to file a greater number of copies as a courtesy.

Since this amendment is administrative in nature, affecting a rule of agency procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends Part 302 of its Procedural Regulations, *Rules of Practice in Economic Proceedings*, (14 CFR Part 302) as follows:

Paragraphs (c) of § 302.3 is amended to read:

**§ 302.3 Filing of documents.**

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section, except that an original and five (5) copies of third-party complaints, answers, documents dealing with discovery, and motions addressed to an Administrative Law Judge may be filed in proceedings under Subpart B—Rules Applicable to Economic Enforcement Proceedings.

(Sections 204 and 1001 of the Federal Aviation Act of 1958 as amended, 72 Stat. 743, 788, 49 U.S.C. 1324, 1481.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 78-36358 Filed 12-28-78; 8:45 am]

**[3510-25-M]**

**Title 15—Commerce and Foreign Trade**

**CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE**

**PART 377—SHORT SUPPLY CONTROLS**

**Reporting of Exports of Cobalt and Related Commodities**

AGENCY: Office of Export Administration, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: These regulations establish a requirement that exporters of cobalt and related commodities mail a copy of each Shipper's Export Declaration they file upon export direct to the Office of Export Administration. The Shipper's Export Declaration will assist that Office in assessing the impact of such exports on domestic availability and price in the face of tightening world supplies.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone 202-377-3795).

SUPPLEMENTARY INFORMATION: Section 3(2)(A) of the Export Administration Act of 1969, as amended, declares that "It is the policy of the United States to use export controls . . . to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand . . ." Section 4(c)(1) of the Act further provides that, to effectuate the policy set forth in Section 3(2)(A), the Secretary of Commerce shall monitor exports of any non-agricultural article, material, or supply "when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof." Section 4(c)(1) further provides that "such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of this Act." Section 7 provides authority to obtain information necessary or appropriate to the enforcement of the Act and provides in subsection (d) that "In the administra-

tion of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics."

The Department has reviewed the current and prospective supply and export situation for cobalt and related commodities and, after consulting with other appropriate federal agencies, has determined that it is necessary to obtain more adequate and timely information on the export of such commodities that it is presently receiving in order to carry out the purposes of the Export Administration Act. Accordingly, under authority of the Export Administration Act, a procedure is established which requires exporters of cobalt and related commodities to all destinations, including Canada, to forward directly to the Office of Export Administration a copy of each Shipper's Export Declaration which they file with the exporting carrier (or the post office if shipment is made by mail) and to indicate on that copy of the Declaration the actual cobalt content of the commodities listed thereon and any intended reexport of the commodities of which they have knowledge. Exporters are further required to advise the Office of Export Administration in writing of any reexports of such commodities of which they become aware after filing the Shipper's Export Declaration.

While the Department has the authority to monitor exports through a weekly or monthly reporting program, it believes that under current circumstances the use of an extra copy of the Shipper's Export Declaration in lieu of a separate monitoring report will minimize the reporting burden on industry and is a more appropriate and effective way of obtaining the required detailed data on exports of these commodities on a current basis.

Exporters are reminded in this connection of the recordkeeping requirements of § 387.11 of the Export Administration Regulations and they are specifically advised that it is the Department's intention to request additional information from the exporter or his agent in any instance where the Shipper's Export Declaration appears to have been improperly completed or where relevant information required to be shown thereon is either lacking or not clear.

This reporting requirement takes effect with respect to any Shipper's Export Declaration covering the cobalt or related commodities containing 10 percent or more cobalt listed in Supplement No. 1 to Part 377 of the Export Administration Regulations, which the exporter or his agent files



with the exporting carrier (or the post office if shipment is made by mail) after 12:01 AM EDT January 10, 1979. Exporters are required to mail a copy of each such Shipper's Export Declaration to the Office of Export Administration within 24 hours of filing the original Shipper's Export Declaration with the exporting carrier (or the post office). Unless already shown thereon, the actual cobalt content of each commodity listed on the Shipper's Export Declaration and, if the exporter knows that any portion of the commodities are destined to be reexported, that fact together with the ultimate country of intended destination, if known, must be added to that copy of the Declaration before it is placed in the mail.

The action announced herein is taken without notice of proposed rule-making and opportunity for comment because Section 8 of the Export Administration Act provides an exemption from such requirements. However, written comments on this action are solicited on a continuing basis. Interested parties are encouraged to submit written comments, views, or data concerning the regulations to the U.S. Department of Commerce, Office of Export Administration, Attention: Short Supply Division, Room 1617A, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. All such material should be submitted in triplicate.

Accordingly, the Export Administration Regulations (15 CFR Part 368 et seq.) are amended as follows:

1. A new § 377.5 is established to read as follows:

**§ 377.5 Cobalt and related commodities.**

(a) Submission to Office of Export Administration of Copy of Shipper's Export Declaration.—Upon filing a Shipper's Export Declaration\* covering the export from the United States to any destination, including Canada, of one or more of the cobalt or related commodities listed in Supplement No. 1 to this Part 377, exporters are required to mail a copy of the Shipper's Export Declaration filed with the exporting carrier (or the Post Office if shipment is made by mail), to the Office of Export Administration at the following address:

Office of Export Administration, Attention: Short Supply Division, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

Each such copy of the Shipper's Export Declaration should be a true copy of the signed original except that, if the signed original did not contain the information required under subsection (b) below, this information must be added to the copy of the Declaration.

\*See Part 368 of the Export Administration Regulations for provisions relating to filing of Shipper's Export Declarations.

lation mailed to the Office of Export Administration. The envelope in which this copy is mailed must be clearly marked on the exterior "Cobalt Export Report." If a correction is made in a Shipper's Export Declaration after a copy thereof has been mailed to the Office of Export Administration, a copy of such corrected Declaration containing the additional information required by subsection (b) below and conspicuously marked in the upper right hand portion of the form "CORRECTION COPY," must be mailed to the Office of Export Administration.

(b) Additional Information to be Shown on Copy of Shipper's Export Declaration Mailed to Office of Export Administration.—Each copy of a Shipper's Export Declaration covering an export of one or more of the cobalt and related commodities listed in Supplement No. 1 to this Part 377, which is sent to the Office of Export Administration pursuant to subsection (a) above, must show—separately for each separate cobalt and related commodity shown thereon—the cobalt content of such commodity in pounds. If this information is not already shown on the copy of the original Declaration which was filed with the exporting carrier (or the post office), it must be added to the copy of that Declaration which is mailed to the Office of Export Administration. In addition, if the exporter or his agent has reason to believe that the commodities listed on the Declaration, or any portion of such commodities, will be reexported, that information, together with the intended new country of destination if known, must be noted on the copy of the Declaration which is mailed to the Office of Export Administration.

(c) Deadline for Submission.—The copy of the Shipper's Export Declaration to be mailed to the Office of Export Administration must be placed in the U.S. mails by the exporter or his agent within 24 hours of the filing

of the original Declaration with the exporting carrier (or post office). Similarly, a copy of each corrected Declaration must be mailed to the Office of Export Administration within 24 hours of filing the original of the corrected Declaration.

(d) Reporting of Reexports.—Should the exporter or his agent, after submitting a copy of a Shipper's Export Declaration for cobalt or related commodities to the Office of Export Administration as prescribed above, gain knowledge that the shipment covered by such Declaration, or any portion of such shipment, has been or will be reexported to a country of ultimate destination not previously reported to the Office of Export Administration pursuant to subsection (b) above, the exporter should immediately advise the Office of Export Administration (Attention: Short Supply Division) in writing of such actual or intended reexport.

(e) Recordkeeping.—Exporters are reminded that the recordkeeping requirements of § 387.11 of these Regulations are applicable to both exports and reexports of the cobalt and related commodities listed in Supplement No. 1 to this Part 377.

(f) Verification of Shipper's Export Declarations.—Should a copy of the Shipper's Export Declaration submitted to the Office of Export Administration lack any relevant information required to be shown thereon, be unclear or appear to have been completed incorrectly, the Office of Export Administration will communicate directly with the exporter or his agent in order to clarify the transaction.

(g) Confidentiality.—Any information or documentation submitted by the exporter under this section will be deemed confidential information under Section 7(c) of the Export Administration Act of 1969, as amended.

2. A new Supplement No. 1 to Part 377 is established to read as follows:

**SUPPLEMENT NO. 1 TO PART 377**

**COBALT AND RELATED COMMODITIES SUBJECT TO EXPORT REPORTING WHEN THEY CONTAIN 10 PERCENT OR MORE COBALT<sup>1</sup>**

| Schedule B Number | Commodity Description                                                                                                                                                                                                         | Unit   |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 418.6100          | cobalt oxides and hydroxides (except pigment grades)                                                                                                                                                                          | pounds |
| 418.6300          | cobalt molybdate catalysts                                                                                                                                                                                                    | pounds |
| 472.6000          | cobalt oxides and hydroxides (including pigment grades)                                                                                                                                                                       | pounds |
| 630.0300          | unwrought nickel                                                                                                                                                                                                              | pounds |
| 620.0400          | nickel waste and scrap                                                                                                                                                                                                        | pounds |
| 620.0600          | plates, sheets, and strip, all the foregoing wrought, of nickel, whether or not cut, pressed, or stamped to nonrectangular shapes or clad                                                                                     | pounds |
| 890.1800          | bars, rods, angles, shapes, and sections, all the foregoing wrought, of nickel                                                                                                                                                | pounds |
| 620.2700          | wire of nickel                                                                                                                                                                                                                | pounds |
| 620.4100          | pipes, tubes, blanks, and fittings of nickel                                                                                                                                                                                  | pounds |
| 630.3020          | cobalt and cobalt alloys, unwrought and waste and scrap (includes but is not limited to cobalt metal, briquettes, electrolytic lumps and shot, rondelles, broken cathodes, granular forms and powders, including ultra-fine). | pounds |

**SUPPLEMENT NO. 1 TO PART 377—Continued**

**COBALT AND RELATED COMMODITIES SUBJECT TO EXPORT REPORTING WHEN THEY CONTAIN 10 PERCENT OR MORE COBALT<sup>1</sup>**

| Schedule B Number | Commodity Description                         | Unit   |
|-------------------|-----------------------------------------------|--------|
| 630.3050          | cobalt and cobalt alloys, wrought             | pounds |
| 630.6020          | tantalum alloy powder                         | pounds |
| 630.6040          | tantalum alloy, unwrought and waste and scrap | pounds |
| 630.6060          | tantalum alloy wrought                        | pounds |
| 630.7010          | tungsten alloy powder                         | pounds |
| 630.7020          | tungsten alloy wire                           | pounds |
| 630.7060          | tungsten alloy, unwrought and waste and scrap | pounds |
| 630.7080          | tungsten alloy, other                         | pounds |
| 422.4000          | tungsten carbide                              | pounds |
| 422.4200          | other tungsten compounds                      | pounds |
| 423.1090          | tantalum carbide powder                       | pounds |

<sup>1</sup>Commodity description, not Schedule B Number, is determinative of the commodity subject to export reporting.

3. Section 386.3(f)(3) is revised to read as follows:

**§ 386.3 Shipper's export declaration.**

(f) • • •

(3) *Additional copies of Declaration.*—The Office of Export Administration may require additional copies of the Declaration for exports under a validated license that contain special requirements for additional documents or information. (See §§ 371.17(f)(2)(i), 373.2(f)(1), and 386.3(o).) Additional copies of the Declaration may also be required for commodities subject to the provisions of Part 377 of these Regulations. For exports from the United States to foreign countries made via Canada an additional copy of the Declaration must be submitted to Canadian authorities. (See § 374.6.)

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

**STANLEY J. MARCUSS,**  
Deputy Assistant Secretary,  
for Trade Regulation.

[FR Doc. 78-36329 Filed 12-28-78; 8:45 am]

**[3510-25-M]**

**Part 371—General Licenses**

**Part 373—Special Licensing Procedures**

**Part 379—Technical Data**

**Part 385—Special Country Policies and Provisions**

**Part 386—Export Clearance**

**Part 399—Commodity Control List and Related Matters**

**Miscellaneous Corrections**

**AGENCY:** Industry and Trade Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule provides authority citations inadvertently omitted from documents at time of publication.

**EFFECTIVE DATE:** Retroactive with issuance of documents referenced below.

**FOR ADDITIONAL INFORMATION CONTACT:**

Maurice E. Schweinhart, Office of Management and Systems, Industry and Trade Administration, Department of Commerce, Washington, D.C. 20230, 202-377-3585.

In Federal Register documents appearing at page 7311 of February 22, 1978, FR Doc. 78-4697, amending Parts 371, 373, 379, 385, 386, and 399 and at page 10340 of March 13, 1978, FR Doc. 78-6484, amending Part 371, the authority citation should read as follows:

**AUTHORITY:** Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

In Federal Register document appearing at page 23991 of June 2, 1978, FR Doc. 78-15395, amending Part 315, the authority citation should read as follows:

**AUTHORITY:** Headnote 2, subpart B, part 6, schedule 6 of the Tariff Schedules of the United States (19 U.S.C. sec. 1202) relating to the development, maintenance, and publication of a list of bona fide motor-vehicle

manufacturers, and authority to promulgate rules and regulations pertaining thereto under section 501(2) of Title V of the Automotive Products Trade Act of 1965 (19 U.S.C. sec. 2031).

**FRANK A. WEIL,**  
Assistant Secretary for  
Industry and Trade.

[FR Doc. 78-36251 Filed 12-28-78; 8:45 am]

**[6355-01-M]**

**Title 16—Commercial Practices**

**CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION**

**SUBCHAPTER A—GENERAL**

**PART 1018—ADVISORY COMMITTEE MANAGEMENT AMENDMENT TO REGULATIONS**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's regulations on Advisory Committee Management to accommodate a new advisory committee, the Toxicological Advisory Board, which Congress authorized in recent legislation to provide specific scientific and technical advice to the Commission regarding the labeling of hazardous substances.

**EFFECTIVE DATE:** December 29, 1978.

**SUPPLEMENTARY INFORMATION:** Section 10 of the Consumer Product Safety Authorization Act of 1978 (Pub. L. 95-631) amended the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261, et seq.) to provide that the Commission shall establish a Toxicological Advisory Board to provide scientific and technical advice to the Commission on (1) precautionary labeling for hazardous substances subject to the FHSA and on (2) the exemption of certain substances from the labeling requirements under the FHSA. Accordingly, the Commission established the Toxicological Advisory Board on December 22, 1978 to continue for a period of six years. The Board is to be composed of nine members appointed by the Commission who shall be qualified by training and experience in one or more fields applicable to the duties of the Board. At least three of the members of the Board should be members of the American Board of Medical Toxicology. The Board will meet at least twice each year. The charter for the Toxicological Advisory Board was filed with the Congress, the Office of Management and Budget, and the Library of Congress on December 27, 1978.

The establishment of the Toxicological Advisory Board necessitates a number of revisions to the Commis-



sion's Advisory Committee Management Regulations (16 CFR Part 1018) which set forth the Commission's guidelines and policies regarding the management of its advisory committees. Namely, the revisions describe the newly established Board, its purpose and membership composition, and the terms of appointment.

Since the revisions to the Advisory Committee Management regulations merely reflect the statutory requirements for the Board's membership and composition, the Commission has determined that the notice and the public procedure requirement of 5 U.S.C. 553 is dispensed with and that the revisions shall be effective upon publication.

Accordingly, Title 16, Chapter II, Subchapter A, Part 1018 of the Code of Federal Regulations is amended as follows:

1. In Section 1018.12, the first sentence is revised and a new subparagraph (d) is added reading as follows:

§ 1018.12 Statutory advisory committees.

The Commission has four statutory committees:

(d) The Toxicology Advisory Board was established by the Commission on December 22, 1978, pursuant to section 20 of the Federal Hazardous Substances Act, as amended (Sec. 10, Pub. L. 95-631, 15 U.S.C. 12).

2. In § 1018.15, a new paragraph (d) is added reading as follows:

§ 1018.15 Membership composition.

(d) The Toxicological Advisory Board, as specified in section 20 of the Federal Hazardous Substances Act, as amended (Pub. L. 95-631, 15 U.S.C.), shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Commission will seek a balanced membership, including individuals representative of consumers, government, and industry.

3. In § 1018.17, a new subparagraph (d) is added reading as follows:

§ 1018.17 Appointments.

(d) Notwithstanding subparagraphs (b) and (c) above, members of the Toxicological Advisory Board shall be appointed for terms of three years. Members may be reappointed for a subsequent three-year term. Any vacancy on the Board shall be filled in the same manner in which the original ap-

pointment was made. Any person appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall serve only for the remainder of such term.

4. § 1018.21, the first sentence is revised as follows:

§ 1018.21 Calling of meetings.

Advisory committees shall, as a general rule, meet four times per year, except that, as provided by statute, the Toxicological Advisory Board shall meet not less than two times each year.

5. In Section 1018.25, a new paragraph (d) is added reading as follows:

§ 1018.25 Minutes and meetings reports.

(d) In addition to the information required by subsection (a) of this section, the minutes of the Toxicological Advisory Board shall specify the reasons for all conclusions reached and, where conclusions are not unanimous, the Board is encouraged to submit minority or dissenting opinions.

Dated: December 22, 1978.

SADYE E. DUNN,  
Secretary.

(FR Doc. 78-36368 Filed 12-28-78; 8:45 am)

[6355-01-M]

## PART 1030—EMPLOYEE STANDARDS OF CONDUCT

### Amendment of Definition

AGENCY: Consumer Product Safety Commission.

ACTION: Amendment to final rule.

SUMMARY: The Commission's Employee Standards of Conduct regulations, in accordance with the Consumer Product Safety Act (CPSA), restricts certain employees from accepting employment or compensation from a manufacturer subject to the CPSA. In this document the Commission amends the definition of "manufacturer subject to the CPSA" to include manufacturers regulated by the Commission under any Act it administers.

EFFECTIVE DATE: December 29, 1978.

SUPPLEMENTARY INFORMATION: Section 4(g)(2) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2053(g)(2)) provides that employees who are compensated at a rate in excess of the annual rate of basic pay

in effect for grade GS-14 of the General Schedule shall not accept employment or compensation from any manufacturer subject to the CPSA. This restriction applies for a period of twelve months after the employee leaves the Commission. It is designed to prevent people from seeking employment with the Commission or using their Commission employment to gain future employment with manufacturers subject to the CPSA or to acquire such manufacturers as future clients.

In February 1978 a former Commission employee subject to the section 4(g)(2) restriction requested the Commission's opinion on whether this section would prohibit the acceptance of employment with a manufacturer of drugs. By specific exception, drugs are excluded from the definition of "consumer product" under the CPSA (15 U.S.C. 2052(a)(1)(H)). Manufacturers of drugs are therefore not subject to the CPSA. However, the Commission has jurisdiction over drug manufacturers under the Poison Prevention Packaging Act (PPPA, 15 U.S.C. 1471, et seq.), an act which the Commission also administers. Section 30 of the CPSA transferred to the Commission the responsibility for administering and enforcing the PPPA, the Flammable Fabrics Act (15 U.S.C. 1191, et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261, et seq.), and the Refrigerator Safety Act of 1956 (15 U.S.C. 1211, et seq.).

The former employee's request raised the issue of whether a drug manufacturer subject to the PPPA was a manufacturer within the meaning of section 4(g)(2) of the CPSA. In May 1978 the Commission considered whether a drug manufacturer and any other manufacturer subject to regulation under one of the "transferred" acts is a "manufacturer subject to the Act" for the purpose of section 4(g)(2).

The legislative history of section 4(g)(2) stressed the congressional concern with preventing persons from using government employment as a means for subsequently gaining employment in the regulated industry. Nothing in the legislative history differentiates between manufacturer subject to the regulatory provisions of the CPSA and manufacturers subject to the regulatory provisions of the transferred acts. There is therefore no basis to distinguish between former employees seeking employment with one group of manufacturers or another.

The Commission decided that "subject to this Act," as used in section 4(g)(2), includes any manufacturers subject to Commission regulation under the acts transferred by section 30. The Commission believes that this interpretation is consistent with the legislative intent which was to prevent

the employment problem mentioned above.

The Commission's Employee Standards of Conduct regulation includes a provision which is based on section 4(g)(2) of the CPSA (16 CFR 1030.1201). The Commission is therefore amending this provision to reflect its statutory interpretation.

Since this amendment is a statutory interpretation, it is not necessary that the regulation be published for comment under 5 U.S.C. 553 or that there be a delayed effective date.

Accordingly, Title 16, Chapter II, Subchapter A, Part 1030, section 1030.1201(b)(1) of the Code of Federal Regulations is amended, as follows:

(1) The term "manufacturer subject to the Act" means any person who manufactures or imports a consumer product, and shall include any person who manufactures or imports products that are subject to the jurisdiction of the Commission under the Flammable Fabrics Act, as amended (15 U.S.C. 1191, et seq.); the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261, et seq.); the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471, et seq.); and the Refrigerator Safety Act of 1956 (15 U.S.C. 1211, et seq.). The terms "manufacturing," "imports," and "consumer products" are defined in sections 3(a)(8), 3(a)(13) and 3(a)(1) of the Act, respectively.

Dated: December 26, 1978.

SADYE E. DUNN,  
Consumer Product  
Safety Commission.  
(FR Doc. 78-36377 Filed 12-28-78; 8:45 am)

[4110-07-M]

## Title 20—Employees' Benefits

### CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

(Regulation No. 4)

## PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

### Subpart C—Basic Computation of Benefits and Lump Sums

#### NEW METHODS OF COMPUTING BENEFIT AMOUNTS

AGENCY: Social Security Administration, HEW.

ACTION: Interim Regulations.

SUMMARY: These rules state the new methods that will be used to compute the basic benefits, minimum benefits, and cost-of-living increases, and to re-

compute the basic benefit amount. These changes are required by the Social Security Amendments of 1977. The principal purpose of the new methods is to stabilize the relationship between benefits and the worker's earnings, for future beneficiaries. This purpose will be achieved principally by making cost-of-living increases apply only to persons eligible for benefits at the time of the increases and by adjusting, for computation purposes, a worker's past earnings to reflect changes in the wage levels of all wage earners. The effect of the new benefit computation methods is to reduce substantially the long-range social security deficit which resulted in large part from unintended effects of the automatic cost-of-living increase provisions of the 1972 Social Security Amendments and from the overemphasis on a worker's recent earnings when computing benefit amounts.

DATES: Your comments will be considered if we receive them before February 27, 1979. This regulation is intended to take effect on January 1, 1979.

ADDRESSES: Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertinent to the regulations which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Jack Schanberger, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6785.

SUPPLEMENTARY INFORMATION:

#### BACKGROUND

The automatic cost-of-living benefit increase provision of the 1972 Social Security amendments has successfully made inflation-proof the benefits of persons on the social security benefit rolls. This protection is assured by increasing benefits as the Consumer Price Index (CPI) goes up. However, since 1972 the automatic benefit increase has also applied to benefits which will be payable to persons who are not yet eligible. As explained

below, applying cost-of-living increases to future beneficiaries actually overcompensates them for inflation and results in a huge, unnecessary drain on the Social Security Trust Funds.

Benefits have traditionally been based on a worker's average earnings during that worker's working life, so that as the worker's earnings rise, the worker's potential future benefits also rise. Since the 1972 Amendments, benefits for future beneficiaries have also been increased whenever the CPI has risen, and price rises have exceeded the rates expected by Congress. Thus, as wages have increased to reflect price increases and as prices have increased to reflect wage increases, there has been an upward spiraling of benefit levels which has placed a much heavier burden on the Social Security Trust Funds than was intended by Congress.

If the pre-1977 Amendment method for computing benefits had been retained, benefit levels would have risen by about 50 percent more than wages over the next 75 years. As a result of this rise in benefit levels, many workers would have received retirement benefits which were equal to or even greater than their wage levels when they retired. This unintended result accounted for about one-half of the long-range deficit of the trust funds.

#### DECOUPLING

The method provided in the 1977 Amendments for stabilizing the relationship between benefit levels and earnings levels is known as "decoupling." Decoupling means that cost-of-living increases will continue to apply to keep benefits inflation-proof, but only after a person either becomes eligible for benefits, or dies before becoming eligible.

#### BENEFIT COMPUTATIONS BASED ON INDEXED EARNINGS

Along with decoupling, the future benefits of a worker not yet eligible will be protected against inflation by adjusting or "indexing" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings, which will be computed when the worker or the worker's survivors file for benefits, will be used to compute benefit amounts. Pre-amendment computation methods would have used the worker's actual earnings, without adjustment.

#### DEFINITION OF AVERAGE OF TOTAL WAGES

As provided by statute, wages are indexed by applying a ratio to the worker's earnings for each year beginning with 1951. The ratio is the "average wage" earned by all wage earners in



the second year before the year of the worker's eligibility for benefits or death, divided by the "average wage" earned by all wage earners in the year of past earnings being adjusted. Individuals who worked for wages in more than one job will be counted as only one wage earner. To compute the average wage in any given year, therefore, it is necessary to know the total wages earned in that year and the total number of individuals who earned those wages.

The Congress gave the Secretary express authority to decide how to compute the average wage for each year beginning with 1951 using wages reported to the Secretary of the Treasury or his delegate. The Department proposes to determine the average wage figure as described below.

#### 1978 AND SUCCEEDING YEARS

As legislative history suggests, data on total wages and total wage earners will be obtained from W-2 Forms submitted to IRS for income tax purposes. For 1978 and 1979, only W-2 Forms that are attached to IRS Forms 1040 will be used. (Similar data for 1977 will also be obtained, so that average wages for 1951-1977 can be adjusted to the 1978 level.) Beginning with average wages for 1980, all W-2 Forms submitted to IRS for income tax purposes will be used. (Again, similar data for 1979 will be obtained in order to adjust average wages for 1951-1979 to the 1980 level.)

#### 1973 THROUGH 1977

For each year, total wages and total wage earners will be determined from all reports of taxable wages earned during the first quarter of the year, submitted to SSA for social security tax purposes. The average wage for the first quarter of the year will be multiplied by four to obtain the average wage for the year.

For years before 1977, total wages could be determined from IRS W-2 Forms, but not total wage earners. This is because IRS did not process joint returns for those years to indicate whether the husband, wife, or both earned the reported wages. Thus, the best source of data on total wages and total wage earners for these years is SSA's own records.

Total wages for these years are determined by using taxable wages earned during the first quarter of the year rather than wages earned during the entire year. The earnings in the first quarter are considered to be more appropriate, because many wage earners reach the ceiling for reported earnings before the end of the year while relatively few reach the ceiling in the first quarter. For this reason, the first quarter earnings have also been used by SSA for other purposes under the

statute, such as the determination of the contribution and benefit base, which is the maximum annual amount of earnings taxable and creditable toward benefits under social security.

#### 1957 THROUGH 1972

Data on average taxable wages reported for all employees for the first quarter of each year before 1973 are not available on a 100-percent basis. However, beginning with 1957, such data are available from a statistical one-percent sample of social security workers containing information on wages earned during the first quarter of the year and submitted to SSA for social security purposes. As for years 1973 through 1977, the average wage for the first quarter will be multiplied by four to obtain the average wage for the year.

#### 1951 THROUGH 1956

For each year, average taxable wages will be determined from a statistical 0.1% sample containing data on wages earned during the first quarter of the year and submitted to SSA for social security tax purposes. Again, as for years 1957 through 1977, the average wage for the first quarter will be multiplied by four to obtain the average wage for the year.

In addition, appropriate adjustments will be made so that, despite the different sources of data, the results for all years will be comparable. The following are some examples of the differences in data for various periods:

(a) For years beginning with 1980, all W-2 Forms will be used, while only those W-2 Forms attached to IRS Form 1040's will be used for 1978 and 1979. The data from these two sources are expected to be different since, for example, persons with very low wages may not file a Form 1040.

(b) W-2 Forms submitted to IRS will be used for years after 1977, while wage reports to SSA will be used for earlier years. Wages for all types of employment are reported to IRS, but wages for some types of employment are not reported to SSA. All wages for the year are reported to IRS, but wages are reported to SSA only up to the maximum taxable amount.

(c) Sampling will be used for years before 1973.

Given that similar data on total wages and total wage earners are not available for all years, it is believed that the data and the adjustments that SSA plans to use will produce fair and reliable results.

#### PUBLICATION OF WAGE LEVELS

Each year, the Secretary of Health, Education, and Welfare will publish in the FEDERAL REGISTER the current information on general wage levels that is needed to compute a person's bene-

fit. The first publication will include the average of the total wages for calendar years 1951 through 1977.

#### WHEN WAGE INDEXING IS EFFECTIVE

Wage indexing will become effective for workers who after 1978 first become eligible for retirement or disability benefits or die before becoming eligible. If the wage indexing method results in a lower retirement benefit than would be payable under pre-1977 Amendment methods, the former methods, slightly modified, may be used for persons who become eligible for a retirement benefit in years 1979 through 1983.

#### MINIMUM BENEFIT FROZEN

The 1977 Amendments provide that the minimum benefit amount will be frozen at \$122, which is the amount that is found in the first line of column IV of the benefit table that is in effect for December 1978, raised to the next higher dollar. That amount will then be subject to cost-of-living increases only for years in which a beneficiary is entitled to payments. Freezing the minimum benefit puts proper emphasis on the Supplemental Security Income program as a source of income for the needy. In order to provide for the needy, the minimum benefit has been increased more rapidly in the past than benefits generally. However, these increases have often resulted in somewhat of a windfall for persons who were not needy, but were receiving the minimum because they did not rely on earnings covered by social security as their primary means of support during their working lifetime.

#### SPECIAL MINIMUM BENEFIT INCREASED

The special minimum benefit, which applies to individuals who worked for many years under social security for very low wages, will guarantee these workers a benefit of at least \$11.50, instead of \$9.00, for each year of coverage over 10 and up to 30. The special minimum benefit will be recomputed in January 1979 for present beneficiaries to take into account this increase in the base figure from \$9 to \$11.50.

Cost-of-living increases will now apply to the special minimum benefit, as well.

#### RECOMPUTATIONS

Workers whose benefits were computed using wage indexing will be able to have their basic benefit recomputed if earnings after entitlement will result in a higher benefit, although the additional earnings will not be indexed.

#### ISSUANCE OF REGULATIONS

The provisions for computing benefits under the Social Security Amend-

ments of 1977 are effective January 1, 1979. Therefore, we are publishing these regulations with interim effect, because a delay in implementation would be impractical.

These rules are required by the statute. In the one area where regulations are specified—the definition of the average for the total wages for all workers for each year—our issuance of regulations at this time has enabled us to determine the best available data and the most feasible administrative methods. We are issuing a separate notice giving the average of the total wages for calendar years 1951 through 1977 based on these data and methods. These figures will be used in wage indexing for workers who after 1978 first become eligible for retirement or disability benefits or die before becoming eligible. While the rules will have interim effect, we shall consider public comments before issuing final rules.

(Sections 205, 215, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended, 64 Stat. 506, as amended, 49 Stat. 647; 42 U.S.C. 405, 415, and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance.)

Dated: December 14, 1978.

STANFORD G. ROSS,  
Commissioner of  
Social Security.

Approved: December 16, 1978.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.203 is amended as follows: In paragraph (a), "or average indexed monthly earnings," is added after "average monthly wage"; in paragraphs (d) and (f), the period is deleted after "average monthly wage" and "or average indexed monthly earnings," is added; and paragraphs (m), (n), and (o) are added to read as follows:

#### § 404.203 Definition of terms.

(m) *The average of the total wages.* As used in this subpart, "the average of the total wages" (the average wage) means:

(1) for years after 1977, all remuneration reported as wages on Form W-2 to the Internal Revenue Service for all employees for income tax purposes, divided by the number of wage earners. The term includes remuneration for services not covered by social security and remuneration for covered employment in excess of that which is subject to FICA contributions.

(2) for the years 1951 through 1977, four times the amount of average taxable wages that were reported to the Social Security Administration for the first calendar quarter of each year for social security tax purposes. For years prior to 1973, these average wages will be determined from a sampling of these reports. The average wage amounts for 1951-1977 will then be adjusted to make the amounts comparable to those computed by using W-2 data reported to IRS for income tax purposes.

(n) *Average indexed monthly earnings (AIME).* The "average indexed monthly earnings" (AIME) are the average of the insured individual's monthly creditable earnings in the benefit computation years, as adjusted or "indexed." The adjustment is intended to reflect increases in the average wages of all wage earners from 1951 through the second year before the year the worker dies or becomes eligible for benefits.

(o) *Eligibility.* For purposes of this subpart, an individual is considered to be eligible:

(1) for old-age insurance benefits, beginning with the month in which the individual attains age 62; and

(2) for disability insurance benefits, beginning with the month in which the individual's period of disability begins (see § 404.311)

If fewer than 12 months have passed from the end of an earlier period of entitlement to disability benefits to the beginning of the current period of eligibility to retirement or disability benefits or death, then current eligibility is considered to begin the same month the earlier period of disability began.

#### § 404.205 [Amended]

2. Section 404.205 is amended by deleting "and the Amendments of 1972 (Pub. L. 92-603)," and inserting "the Amendments of 1972 (Pub. L. 92-603); and the amendments of 1977 (Pub. L. 95-216)." in the first sentence; and by inserting after "Act," in the third sentence "from the individual's average indexed monthly earnings (§ 404.212), from the individual's primary insurance benefit if the individual had earnings in years before 1951 (§ 404.213)."

#### § 404.207 [Amended]

3. Section 404.207 is amended by inserting after "higher" in the first sentence of paragraph (a) "or unless the wage indexing method in the Amendments of 1977 applies."

4. Following § 404.211, new §§ 404.212, 404.212a, 404.212b, and 404.212c are added to read as follows:

§ 404.212 Computing an individual's primary insurance amount (PIA) under the 1977 Amendments.

(a) *PIA based on the average indexed monthly earnings (AIME).* The PIA is the sum of three separate percentages of portions of the AIME. (See § 404.212a for an explanation of the AIME.)

(1) For individuals who either become eligible for benefits in 1979 or die in 1979 before becoming eligible, the PIA is computed by adding the following:

(i) 90 percent of the first \$180 of the AIME;

(ii) 32 percent of the AIME over \$180 and through \$1,085;

(iii) 15 percent of the AIME over \$1,085.

(2) If the sum is not a multiple of \$.10, it is rounded to the next higher multiple of \$.10.

(3) For eligibility or death before eligibility after 1979, the same formula is used except that \$180 and \$1,085 are adjusted as explained in paragraph (b) of this section.

(4) If, after adjustment for the cost-of-living increase, the PIA computed under the 1977 Amendments is less than \$122 (as adjusted for the cost of living), which is the minimum amount in column IV of the benefit table that was in effect in December 1978, rounded to the next higher dollar, or is less than the special minimum PIA computed for the individual (as adjusted for the cost of living), then the PIA to be used in determining that individual's benefits is the larger of these two minimum amounts.

(b) *Adjusting \$180 and \$1,085 in the PIA formula after 1979.* For an individual who after 1979 either first becomes eligible for benefits (§ 404.203(o)) or dies before becoming eligible, the \$180 and the \$1,085 are adjusted. The adjustment updates the amounts to reflect the change in average wages of all wage earners which has occurred between 1977 and the second year before the year of first eligibility or death. This is done first by dividing the average of the total wages for the second year before the year in which the insured individual dies or first becomes eligible for benefits, by the average of the total wages for 1977 (the second year before 1979). The answer is multiplied by \$180 and by \$1,085 to obtain the revised figures for purposes of computing the PIA. The revised figures are rounded to the nearer dollar. For example, the amount of \$210.49 is rounded to \$210.00; and \$210.50 is rounded to \$211.00.

*Example.* An insured worker becomes eligible for benefits in 1981. The estimated average of the total wages for 1979, the second year before the worker became eligible, is \$11,311.72



and the average of the total wages for 1977 is \$9,779.44. Thus, \$180 and \$1,085 are adjusted as follows:

$$\$11,311.72/\$9,779.44 \times \$180 = \$208.$$

$$\$11,311.72/$$

$$\$9,779.44 \times \$1,085 = \$1,255.$$

(c) *Prior entitlement to disability insurance benefits (DIB).* The PIA is computed or recomputed as indicated in paragraph (a) of this section for any individual who after 1978 becomes age 62, becomes disabled, or dies before becoming age 62 or disabled, except where the individual was previously entitled to DIB.

(1) *Prior entitlement to DIB before 1979.* The PIA will be computed or recomputed under the pre-1977 Amendments average monthly wage method if the individual was entitled to DIB before 1979 and fewer than 12 months have passed between the prior entitlement to DIB and current eligibility for retirement (RIB) or disability insurance benefits or death. Also, if fewer than 12 months have passed between the prior entitlement to DIB and either current entitlement to RIB or DIB, or death, then the individual's PIA will be the amount computed under paragraph (c)(2) of this section.

(2) *Prior entitlement within past 12 months.* If the individual has been entitled to DIB either before or after 1979 but within 12 months of the first month of current entitlement to retirement or disability benefits or death, the current PIA is the largest of the following:

(i) the PIA (including one computed under a pre-1977 Amendments provision) which was used in figuring the individual's previous DIB, increased by:

(a) any general benefit increase which has occurred since the individual was last entitled; and

(b) any cost-of-living increase (see § 404.221) which has occurred since the individual was last entitled;

(ii) \$122, which is the minimum amount in column IV of the benefit table that is in effect in December 1978, rounded to the next higher dollar, plus any cost-of-living increases which have occurred since the individual was last entitled to disability benefits;

(iii) the special minimum PIA (see § 404.219); or

(iv) a recomputation of the former PIA to take into account earnings after the DIB entitlement ended.

(3) *Prior entitlement to DIB more than 12 months ago.* If the individual's entitlement to DIB ended more than 12 months before the first month of his current entitlement to benefits or death, a new PIA will be computed. The individual's new PIA will be the higher of this newly computed PIA or the PIA that was in effect for the last month of the individual's former entitlement to disability insurance benefits without regard to any interim cost-of-living increases.

#### § 404.212a Computing an individual's average indexed monthly earnings (AIME).

(a) *General.* Earnings up to the annual wage limitation (§ 404.1027) which are recorded in the Social Security Administration's records for an individual will be the basis for computing the AIME. The amounts recorded for each year after 1950 and through the second year before the earlier of the year of first eligibility or death will be adjusted or "indexed" to reflect increases in average wages for all wage earners between the year in which the amounts were earned and the second year before the year of the individual's eligibility for benefits or death.

(b) *Computing the AIME.* (1) To compute the AIME:

(i) Divide the average of the total wages for the second year (1977 or later) before the earlier of the year of

the insured individual's death or first eligibility to benefits, by the average of the total wages for the first computation base year. Multiply the answer by the wages and self-employment income credited to the individual (up to the annual wage limitation) for this first computation base year to obtain the adjusted earnings for that year;

(ii) Repeat this process for each computation base year which is subject to adjustment (see paragraph (b)(2) of this section) to determine the adjusted earnings for each such year;

(iii) Select the highest earnings (adjusted and those which could not be adjusted) for the number of years equal in number to the benefit computation years;

(iv) Total these highest earnings and divide by the total number of months in the benefit computation years. The answer is the average indexed monthly earnings;

(v) If the AIME as computed is not a multiple of \$1, reduce it to the next lower multiple of \$1.

(2) Earnings recorded beginning with the year before death or first eligibility and for each year thereafter may be used in computing the AIME, but the individual's earnings for these years are not adjusted.

*Example.* An individual retires at age 62 in 1979. He earned \$3,000 in 1956. The average annual wages were \$3,532.36 for 1956 and \$9,779.44 for 1977. The individual's indexed earnings for 1956 are computed as follows:

| Indexed Earnings = | Individual's earnings<br>for year to be indexed | Average wage for<br>second year before eligibility<br>or death | Average wage for year<br>being adjusted |
|--------------------|-------------------------------------------------|----------------------------------------------------------------|-----------------------------------------|
|                    | $\times$                                        |                                                                |                                         |
| Indexed Earnings = | $\$3,000 \times \$9,779.44$                     |                                                                |                                         |
|                    |                                                 |                                                                | $= \$8,305.59$                          |
|                    |                                                 |                                                                | $\$3,532.36$                            |

(c) *Determining the computation base years.* For purposes of the AIME, computation base years are determined the same as for the average monthly wage. (See § 404.211(b).)

(d) *Determining the elapsed years.* Elapsed years are determined the same as for the average monthly wage (see § 404.211(c)).

#### § 404.212b Selecting the proper computation method.

(a) *When an individual's benefits are computed under the 1977 Amendments.*

(1) Benefits are computed under the provisions of the Social Security Amendments of 1977 for an individual who after 1978: (i) attains age 62, (ii) becomes disabled, or (iii) dies before age 62. (2) If, however, the individual had been entitled to a disability benefit for any of the 12 months preceding his current eligibility or death, the year in which his former disability eligibility began determines the method of computing the current PIA (see § 404.212(c)(1)).

(b) *When modified pre-1977 Amendments computations are to be used*

*after 1978 for computing a Retirement Insurance Benefit (RIB) or a survivor's benefit.* (1) RIB and dependents' benefits are based on an average monthly wage and a PIA as computed under the pre-1977 amendment provisions if certain conditions are met. (See subparagraph (2) of this paragraph.) In computing the PIA, the benefit table in effect for December 1978 is used without regard to any later benefit increases which might have affected the table, and without using the individual's earnings in the year of eligibility or death or any later years. If a deceased worker met the conditions of this provision, benefits for the survivors are based on the PIA as computed under the pre-amendment average monthly wage provisions, even if the worker had not applied for an RIB.

(2) The conditions for using the pre-1977 Amendments computations are:

(i) The individual had wages or self-employment income credited before 1979;

(ii) The individual did not attain age 62, become disabled, or die before 1979;

(iii) The individual becomes age 62 before 1984; and

(iv) The PIA computed under the pre-1977 amendment average monthly wage provision is higher than the PIA computed under the 1977 Amendments, including the special minimum benefit and pre-1951 earnings provisions, after adding any applicable cost-of-living increases to the computations.

#### § 404.212c Publication of formula for computing AIME and PIA.

Before November 2 of each year, the Secretary of Health, Education, and Welfare will publish in the *FEDERAL REGISTER* the formula for computing benefits for the next year, the formula for adjusting wages and self-employment income when computing the AIME, and the average of the total wages needed for these computations. The first publication includes the average of the total wages for each calendar year after 1950 through 1977.

5. In section 404.219 paragraphs (a) and (b)(2) are amended and paragraph (d) is added to read as follows:

#### § 404.219 Special minimum primary insurance amounts.

(a) *General.* The 1972 amendments provided for a special computation of primary insurance amounts as an alternative to the method described in § 404.209 and § 404.213. Under that provision, for monthly benefits payable after December 1972 and for lump-sum payments for deaths occurring after that month, an insured individual's primary insurance amount is equal to \$8.50 multiplied by the

number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The 1973 amendments modified this provision so that for monthly benefits payable after February 1974 and for lump-sum payments for deaths occurring after that month, an insured individual's primary insurance amount is equal to \$9.00 multiplied by the number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The maximum primary insurance amount under this special minimum computation is \$180 for months after February 1974 (\$170 for January 1973 through February 1974). These amendments did not provide any additional increase or change in this provision for months after February 1974. The 1977 amendments further modified this provision so that beginning January 1979, the PIA's are computed or recomputed by multiplying \$11.50 times the number of the individual's years of coverage in excess of 10 but not more than 30, and the special minimum PIA is now subject to cost-of-living increases which are applicable to both current and future beneficiaries. The special minimum PIA provision applies only when it produces a PIA which is greater than the PIA determined under the average monthly wage method (§ 404.209), the indexing method (§ 404.212), and the pre-1951 earnings method (§ 404.213), whichever applies.

(b) *Years of coverage.* In computing an insured individual's primary insurance amount under the special minimum provision described in paragraph (a) of this section, the number of the individual's "years of coverage" is equal in number to the sum of the following, up to a maximum of 30: . . .

(2) The number of "computation base years" after 1950 (see § 404.211(b)) in which the individual's creditable earnings for the year were not less than 25 percent of the maximum creditable amount for that year (see § 404.1027 and § 404.1068) as determined under the provisions of section 230 of the Act as in effect before the 1977 Amendments.

(d) *Recomputing the special minimum primary insurance amount.* Under the 1977 Amendments the Secretary recomputes the special minimum PIA's for all current beneficiaries by using \$11.50 as the base figure by which the number of years of coverage is multiplied. The recomputed amount is effective January 1979 and is then subject to cost-of-living increases.

6. Section 404.221 is amended by changing the cross-reference in the second sentence of paragraph (a) from

"(see § 404.231)" to "before January 1979 (see § 404.219)"; and by adding paragraphs (c), (d), and (e) to read as follows:

#### § 404.221 Cost-of-living benefit increases.

(c) *Determining cost-of-living increases after 1978.* (1) Beginning in 1979, cost-of-living increases are also applicable; (i) to the special minimum benefit (see § 404.219), (ii) to all primary insurance amounts initially computed under the 1977 Amendments (including a PIA computed under a pre-1977 Amendments computation under § 404.212b(b)) beginning with the year in which the individual becomes eligible for benefits or dies, and (iii) to the maximum family benefit. (2) The \$122 minimum benefit, which is the smallest amount in column IV in the table of benefits for December 1978 rounded to the next higher dollar, is increased, but subject to the following provisions:

(i) If an individual is entitled to an old-age benefit, the minimum PIA is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65.

(ii) If an individual is entitled to a widow's or a widower's benefit, the minimum primary insurance amount on which that benefit is based is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65. However, cost-of-living increases will apply for any year before these events if one or more individuals are entitled to a child's, mother's, or parent's benefit for any month in that year.

(iii) A cost-of-living increase is not applied to a minimum PIA for any year in which no one is entitled to a benefit on the worker's earnings record for any month of that year.

(iv) If no cost-of-living increase applies to the minimum PIA in any year because of the provisions of this section, the next cost-of-living increase after that year that can apply will apply to the PIA as it may have been previously increased for the cost of living.

(v) Despite the restrictions in clauses (i) through (iv) of this paragraph, no PIA can be less than the one that would be computed, after adjustment for the cost of living, under the indexing method (§ 404.212), the special minimum benefit (§ 404.219), or the pre-1951 earnings method (§ 404.213), whichever is highest.

(d) *Effective date of increase.* The cost-of-living increase goes into effect



in June of the year in which the cost-of-living computation quarter occurs, regardless of when during that year the individual becomes entitled or reentitled to benefits.

(c) *Publishing cost-of-living increases after 1978.* When the Secretary determines that a cost-of-living increase is due, he publishes the following information in the *FEDERAL REGISTER* within 45 days after the close of the latest cost-of-living computation quarter:

- (1) The fact that an increase is due;
- (2) The percentage of the increase;
- (3) A revised range of the special minimum primary insurance amounts possible after the latest cost-of-living increase;
- (4) A revised range of the maximum family benefits possible after the latest cost-of-living increase; and
- (5) A revised table which will be deemed to appear in section 215(a) of the Act (see § 404.223) for the purpose of computing benefits under the pre-1977 Amendments provisions.

7. Section 404.244 is amended by adding paragraph (b)(3) to read as follows:

§ 404.244 "Automatic" recomputation.

- (b) *Method of recomputation.* . . . .
- (3) The 1977 Social Security Amendments provide that the new indexing computation method described in § 404.212 must be used to recompute the PIA for an individual who has wages or self-employment income after 1978 if the PIA was originally computed or could have been computed under the new method. The actual dollar amounts (not to be adjusted) in the Social Security Administration's records for the year of entitlement and each later year will annually be compared with the earnings in the base years that were used in the last computation. Higher earnings in any year that were not used in the last computation will be substituted for one or more years of lower earnings that were used, and the PIA will be recomputed. The \$180 and the \$1,085 as adjusted in the initial computation (see § 404.212(b)) are used, without any further adjustment, each time the PIA is recomputed. The recomputation must increase the PIA by at least \$1 and is effective beginning with the month of death, or, for a living individual, January following the last year of higher earnings used in the recomputation. (See § 404.219 for recomputing the special minimum benefit.)

[FR Doc. 78-36344 Filed 12-28-78; 8:45 am]

[4110-03-M]

## Title 21—Food and Drugs

### CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### Febantel Paste

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Bayvet Division of Cutter Laboratories, Inc., to delete the restriction on the use of febantel paste in treating pregnant mares. The paste is used as an anthelmintic paste in treating horses for intestinal worms.

EFFECTIVE DATE: December 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bayvet Division of Cutter Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 107-345V to delete the present restriction against use of febantel paste in pregnant mares. The product is presently regulated for use orally or in the feed of horses, foals, and ponies (except pregnant mares) for the removal of large strongyles, sexually mature and immature ascarids, pinworms, and the various small strongyles.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82

Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.903 *Febantel paste* by deleting paragraph (d)(3)(ii) and marking it reserved.

Effective date. This regulation shall be effective December 29, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: December 19, 1978.

LESTER M. CRAWFORD,  
Director, Bureau of  
Veterinary Medicine.

[FR Doc. 78-35900 Filed 12-28-78; 8:45 am]

[4110-03-M]

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### Lenperone Tablets and Lenperone Hydrochloride Injection; Revocation of Certain Regulations.

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document revokes certain animal drug regulations to reflect withdrawal of approval of two new animal drug applications (NADA's) providing for use of lenperone hydrochloride injection and tablets. This action was requested by A. H. Robins Co., the sponsor.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093

SUPPLEMENTARY INFORMATION: In a separate document published elsewhere in this issue of the *FEDERAL REGISTER*, the agency is withdrawing approval of NADA's 96-508 and 97-901 for lenperone hydrochloride injection and tablets, respectively. The applications are held by A. H. Robins Co., Research Laboratories, 1211 Sherwood Ave., Richmond, VA 23220. Accordingly, the regulations in Parts 520 and

522, reflecting approval of these applications, are revoked.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 520 and 522 are amended as follows:

§ 520.1235 [Revoked]

1. In Part 520, by revoking § 520.1235 *Lenperone tablets*.

§ 522.1235 [Revoked]

2. In Part 522, by revoking § 522.1235 *Lenperone hydrochloride injection*.

Effective date. This regulation is effective December 29, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: December 19, 1978.

LESTER M. CRAWFORD,  
Director, Bureau of  
Veterinary Medicine.

[FR Doc. 78-35908 Filed 12-28-78; 8:45 am]

[4110-03-M]

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### Butamisol Hydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the animal drug regulations to reflect the redesignation of the section number assigned to butamisol hydrochloride. An incorrect section number was inadvertently assigned when the section was added to the regulations in an earlier amendment.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In the *FEDERAL REGISTER* of April 14, 1978 (43 FR 15625), the Food and Drug Administration (FDA) amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co., providing for the use of butamisol hydrochloride for treatment of

whipworms and hookworms in dogs. The new provisions were inadvertently assigned to § 522.264 (21 CFR 522.264). The provisions should have been assigned to § 522.234 (21 CFR 522.234); the agency is now redesignating the section to reflect the proper placement of butamisol hydrochloride.

§ 522.234 [Redesignated]; § 522.264 [Redesignated].

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 522 is amended by redesignating § 522.264 *Butamisol hydrochloride* as § 522.234 *Butamisol hydrochloride*.

Effective date. This amendment is effective December 29, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: December 15, 1978.

TERENCE HARVEY,  
Acting Director, Bureau  
of Veterinary Medicine.

[FR Doc. 78-35906 Filed 12-28-78; 8:45 am]

[4110-03-M]

[Docket No. 77N-0404]

#### PART 101—FOOD LABELING

##### Protein Supplements, Warning Labeling

AGENCY: Food and Drug Administration.

ACTION: Tentative Final Rule.

SUMMARY: This tentative final rule will establish label warning requirements for products prepared in whole or in part from protein, protein hydrolysates, amino acid mixtures or combinations of these that may be used to reduce weight. The agency is establishing these requirements on the basis of evidence that very low calorie diets consisting primarily of protein may cause serious medical problems, or death. The warning requirements are to ensure that consumers are alerted to the potential health hazards associated with consumption of protein supplements and products prepared in whole or in part from protein, protein hydrolysates, amino acid mixtures, or a combination of these for extended periods of time as the sole or primary source of calories in order to lose weight.

DATES: Written comments by February 27, 1979; the proposed effective date of a final rule based on this tentative final rule is 60 days after publication of the final rule in the *FEDERAL REGISTER*.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Victor P. Frattali, Bureau of Foods (HFF-200), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION:

#### I. INTRODUCTION

In the *FEDERAL REGISTER* of December 2, 1977 (42 FR 61285), the Commissioner of Food and Drugs proposed to require warnings on the label of protein supplements that may be used for weight reduction or weight maintenance. The proposal was issued after the agency received numerous reports of illness and death among persons using these protein products for weight reduction or maintenance. Additional reports of illness and death have been received in response to the proposal.

In addition to the proposal, the agency has distributed to health professionals a special issue of the *FDA Drug Bulletin* (January-February 1978, Vol. 8, No. 1) requesting information on illness or death associated with the use of the so-called "predigested liquid protein" products, other protein supplements or adherence to a very low calorie diet.

On December 6, 1977, the Assistant Secretary for Health of the Department of Health, Education, and Welfare established the U.S. Public Health Service (USPHS) Protein Diet Task Force consisting of representatives from the Food and Drug Administration (FDA), the Center for Disease Control (CDC), the National Institutes of Health (NIH), and the National Center for Health Statistics (NCHS), to explore the public health problem of deaths and injuries associated with the use of protein products as the sole or primary source of calories to achieve weight reduction. The USPHS Task Force has engaged in a number of activities designed to increase our knowledge of, and understanding about, the medical consequences of adherence to these protein diets. These activities and the results obtained thus far are described below.

In addition to the activities of the USPHS Task Force, FDA has been working closely with the Federal Trade Commission (FTC) on this matter. In particular, the FTC has been assessing the advertising for these protein products.



## II. SUMMARY OF DATA AND INFORMATION-GATHERING ACTIVITIES

To date, 60 deaths associated with the use of protein or related products as the principal or sole source of calories for rapid weight loss have been brought to the attention of FDA. These cases, which involve women and men, and blacks and whites, continue to be investigated by FDA and CDC.

Most of the persons who died were consuming solutions of partially hydrolyzed protein of low biological quality derived from gelatin, the so-called "predigested liquid protein" products. In evaluating these deaths, FDA and CDC have used strict criteria to determine whether the deaths can unequivocally be attributed to the use of a protein product in the manner described above. The primary criterion used is that the decedent's death was a cardiac one without evidence of any previous disease other than obesity.

To date, 16 of the 60 cases have been found to meet this criterion. All of the 16 decedents were white women between 23 and 51 years of age who were on some type of low calorie protein diet for a prolonged period of time (2 to 8 months) and who had achieved major weight loss (20 to 139 pounds). Eleven of these 16 decedents were women between the ages of 25 and 44. These 11 deaths are being used to estimate the death rate among persons in the United States in this age range who adhered to a very low calorie protein diet.

The following activities are underway to increase the body of information, and hence our understanding of these deaths:

1. Beginning in late December 1977, FDA and CDC jointly developed a telephone interview probability survey to determine the extent of use of protein products as the principal or sole source of nourishment for purposes of rapid weight reduction among 25- to 44-year-old females. The survey was conducted under contract and obtained information on the type(s) of product(s) used, the manner and duration of use, and other related facts from females in the age range of interest who were on a diet to lose weight in 1977. Out of 19,260 households screened, a total of 6,616 eligible respondents were interviewed between March 9 and April 15, 1978 regarding their use of protein products from January 1977 to the date of the interview. The completion rate for the survey was 87.3%.

Use rates were determined for the different forms of protein commonly found on the market. Based on the use rates for "predigested liquid protein" products, statistical projections were made of the numbers of liquid protein users in the U.S. among 25- to 44-year-old females during 1977. These projec-

tions were developed for the liquid form of protein products in order to establish a death rate by combining such information with data on deaths among liquid protein dieters from the same population group. Out of a total of 60 cases, FDA and CDC have compiled information on 11 deaths among obese women who had been using liquid protein products for 2 months or longer and who were free of a serious underlying illness. All 11 were white women between 25 and 44 years of age who died between the beginning of July and the end of December in 1977.

The statistical projections of the liquid protein survey data produced an upper estimate (.95 confidence limit) of 98,000 white females in the U.S. who used a liquid protein product as the principal or sole source of nourishment for 1 month or longer during 1977. Among this group of users, a smaller group, estimated to be 37,000 (.95 confidence limit), used liquid protein for 2 months or longer. The projected number of users for 2 months or longer was subsequently taken as the appropriate denominator for purposes of calculating the death rate. Relating the 11 deaths over a 6-month period, or a projection of 22 deaths per year, to the estimated 37,000 users produces an estimated adjusted annual death rate of 59 per 100,000 associated with the particular syndrome observed among strict dieters.

The telephone survey also identified a number of users of the various forms of protein products among black females in the 25- to 44-age range and among females in other racial groups. The survey also gathered additional information about the manner in which respondents learned about, and decided to use, protein products, how they perceived product effectiveness as an aid to weight loss, and how they conceived intentions about future use of the products. The full report of the telephone survey has been placed on file with the FDA Hearing Clerk (RPT 300 and RPT 301).

2. From national statistics compiled by NCHS, the annual death rate over the past few years among premenopausal white females attributable to acute myocarditis, intractable cardiac arrhythmias, and related cardiac abnormalities has been slightly less than 2 per 100,000. In order to derive a better estimate of the rate for obese females from this population subgroup whose deaths are not associated with antecedent serious illness, the USPHS Task Force recommended, and CDC and NCHS are currently conducting, a study on information from death certificates for 1975-1977. In appropriate cases, CDC will contact the physicians who signed the certificates and examine past medical records. The norma-

tive death rate for obese, but otherwise healthy, females is required for a more precise estimate of the increase in mortality among dieters whose deaths are associated with use of a protein product.

3. To explore the basic mechanisms for the cause of death, FDA initiated experimental protocols using the laboratory rat as a model. These tests are intended to examine the pathophysiology under severe conditions of calorie restriction on diets formulated primarily from commercial protein supplements. The studies were designed to assess the correlations of myocardial arrhythmias and death with various aberrant states of nutrition health and rate of weight loss. These studies are a prelude to a more definitive analysis of the problems associated with very low calorie protein diets. As discrete parts of the study are completed, the results will be subject to peer review in the normal course of events for publication in the scientific literature.

4. FDA has made inspections of manufacturers, repackers, and reformulators of "predigested liquid protein" and other types of protein products promoted for weight control. Neither information obtained regarding manufacturing methods nor analyses of products obtained during establishment inspections have yet provided insight into the cause of death.

5. More than 165 reports of adverse reactions and effects attributed to consumption of protein products by consumers attempting to lose weight have been reported to FDA. Practically all of these reports resulted from consumer complaints directed to FDA district and regional offices located throughout the country. In addition, approximately 60 drug experience reports have been received on the use of protein products for weight reduction purposes. These reports were submitted in response to a request for such reports directed to the medical profession through an article on the subject and a report form included in the January-February 1978 issue of the *FDA Drug Bulletin*. A synopsis of most of these reports from consumers and health professionals is on file with the FDA Hearing Clerk (RPT 273 and RPT 274).

The complaints and adverse reactions reported were very diverse. Complaints included nausea, vomiting, diarrhea, constipation, tachycardia (rapid heart rate or palpitations), breathlessness, tinnitus (ringing in the ears), pain in the chest or abdomen, muscle cramps, headache, weakness, nervousness, amenorrhea (cessation of menstruation), decreased sex drive, skin rash, hair loss, blurring of vision, and impairment of mental concentration abilities. Adverse reactions includ-

ed electrolyte imbalances (irregularities of heart beat), myocardial infarction ("heart attack"), hypertension (high blood pressure), hemorrhage, protein-calorie malnutrition, anaphylaxis (severe allergic reaction), convulsions, unconsciousness, renal calculi (kidney stones), renal failure, gout, and hepatitis.

Review of these reports by FDA revealed no consistent pattern of complaints or reactions. Nausea, vomiting, diarrhea and headache were among the most frequently recorded complaints. The details provided in these reports were insufficient to indicate a cause-and-effect relationship between specific products or the products generally and the reported complaints and reactions. Hence, a cause-and-effect relationship can neither be affirmed nor rejected on the basis of the existing information from these reports.

There were sufficient details among the reported adverse reactions, however, to warrant concern. The most noteworthy were reports of electrolyte imbalance, i.e., hypokalemia (low blood potassium levels), and hyperkalemia (high blood potassium levels), which can lead to irregularities of heart rhythm and function. The question of reduced resistance to infection arose because of both reported symptoms commonly associated with infections and the observation of evidence of myocarditis in some individuals who succumbed (described in the issues of the *Morbidity and Mortality Weekly Report* for November 18, and December 30, 1977, Vol. 28, Nos. 46 and 52, respectively; and July 7, 1978, Vol. 27, No. 27). The possibility of allergic reaction emerged on the basis of such reports as gastrointestinal disorders, tachycardia, and skin rashes. Several reports also raised the possibility of adverse interactions with drugs. The frequency of reports of complaints and adverse reactions is sufficient to suggest that, in addition to precipitous cardiac arrhythmias and death, use of protein products for weight reduction purposes may be associated with a wide variety of symptoms and adverse signs in some individuals. Nevertheless, the primary adverse effect associated with the use of very low calorie protein diets for weight reduction purposes is the sudden onset of heart irregularities and death in previously well individuals.

6. Finally, the Nutrition Coordinating Committee of NIH has concluded that research on very low calorie diets is appropriate for inclusion within the framework of their total obesity research program. In addition, the USPHS Task Force suggested that medical and scientific opinion be obtained from a select group of experts

on the immediate and long-term research needs and priorities on the public health problem at issue.

The USPHS Task Force has continuously monitored the death and injury information and related activities, and has concluded that the total body of existing knowledge on the subject continues to support the hypothesis that a cause-and-effect relationship exists between cardiac deaths and prolonged use of protein products as the principal or sole source of nourishment for purposes of rapid weight reduction, i.e., when the daily caloric intake is significantly below 800 Calories (i.e., below 800 kilocalories). This hypothesis rests primarily on the fact that cardiac deaths in the absence of clear cause are rare in premenopausal women, and that the number of deaths observed among women on very low calorie protein diets appears to far exceed the expected number.

To make a quantitative assessment of the difference in death rates, several bodies of information are required.

National mortality data indicate that the death rate due to a number of cardiac abnormalities among premenopausal women is less than 2 per 100,000 population per year. As mentioned previously, an effort is underway to further refine this information to arrive at the death rate due to cardiac abnormalities unassociated with antecedent disease among obese premenopausal women.

The occurrence of such deaths is so rare that no extensive epidemiological data analyses are known to exist. In any event, current estimates indicate that the normative death rate among obese, but otherwise healthy, females is unlikely to be significantly different from that for the general female population. Combining information on reported deaths among premenopausal female dieters with the telephone survey data on protein diet use rates yields an estimated annual death rate for dieters of 59 per 100,000. Comparing the expected mortality rate of less than 2 per 100,000 for all white females in the age range of interest with the estimated rate for dieters supports the initial indication that the observed death rate due to cardiac abnormalities among females on low calorie protein diets is much greater than the death rate for similar cause among nondieters. These developments continue to support the need for warning labeling on protein products.

Apart from the pursuit of epidemiological evidence regarding deaths, unequivocal establishment of cause-and-effect depends on a thorough understanding of basic mechanisms; such thorough understanding of the basic mechanisms in this particular instance does not exist. Several research activities are underway to provide addition-

al understanding of the basic mechanisms involved, but there are some limitations on additional research. Because of the decline in use of this extreme approach to weight reduction and because ethical constraints prevent any deliberate trials in humans, it may ultimately prove impossible to establish a cause-and-effect relationship unequivocally in humans.

That it is potentially impossible to establish the cause-and-effect relationship unequivocally (i.e., that a thorough understanding of the basic mechanism at work may not be obtained) should not divert attention from the rather clear evidence described above that reliance on very low calorie protein diets to lose weight is dangerous.

The standards used by public health officials, physicians, and others to conclude, to a scientific certainty, that a cause-and-effect relationship exists are appropriately rigorous. Those same standards do not apply, however, when the question is whether an agency such as FDA, charged with the responsibility of protecting the public health—a responsibility that includes ensuring that consumers are fully apprised of risks inherent in various products—should adopt a rule that requires that warnings about the products be provided on their labels. This is not to say that an agency is free to act in the absence of competent scientific evidence. Rather, it is appropriate and responsible for an agency to mandate that consumers be provided with information or warnings about the use of products when, as is the case here, the evidence strongly suggests a definite relationship between the use of a product and death.

Imposition of a warning on the labeling of these protein products—even with the gaps in our understanding of the basic mechanism—is particularly appropriate because the consequences of indiscriminate use of these protein products is death. It is the Commissioner's belief that the label warning requirements that will be imposed when this tentative final order takes effect will maintain an adequate level of awareness of the possible health risks of a very low calorie protein diet. It is hoped that this heightened awareness will convince interested consumers of the need for extreme care in undertaking a very low calorie diet as well as the need to obtain the advice of a physician skilled in obesity therapy before doing so.

Further, it is hoped that this latter action will generate a candid dialogue between the doctor and the patient concerning the risks of this diet therapy as well as the benefits provided by weight reduction.



### III. AVAILABILITY OF INFORMATION

FDA has obtained an extensive body of information about protein products and the risk to public health that they present when used in very low calorie diet regimens. This information includes reports about, and analyses of, the 60 deaths, adverse reaction and complaint/injury reports, articles from the medical and scientific literature, a report on the telephone survey described above, minutes of the USPHS Task Force meetings and related documents, copies of the comments filed on the proposals, and other material. All of these materials have been placed on display with the FDA Hearing Clerk and have been made available to the public upon request.

The Commissioner encourages persons who intend to comment on this tentative final rule and who wish first to examine the materials that are on file with the FDA Hearing Clerk, to seek copies expeditiously. FDA will expedite the processing of requests under the Freedom of Information Act for these materials. Clearly stated requests for specific records will facilitate prompt disposition of FOI requests. Persons are encouraged to review, to the extent possible, the materials in the FDA Hearing Clerk's office and to request copies of those documents based on their need for them in connection with the filing of comments, and not on a desire to possess a copy of each document that is on file. Although each document is in fact available to the public, the materials are quite voluminous; unlimited requests for copies of all of the documents will, understandably, take more time to process, and thereby delay the date on which the records will be made available.

The Commissioner will be most reluctant to extend the comment period on this tentative final rule. The cooperation of interested persons in filing timely and appropriately restrained FOI requests will enable them to comment intelligently on this tentative final rule without unnecessarily delaying the issuance date of a final rule.

### IV. SUMMARY OF DIFFERENCES BETWEEN THE PROPOSAL AND THE TENTATIVE FINAL RULE

The provisions of this tentative final rule differ in several respects from those proposed on December 2, 1977. The following differences are the most significant ones:

1. In the proposal the warning requirement in §101.17(d)(1) applied to "products composed essentially of protein or protein hydrolysates." In the tentative final rule, the warning requirement applies to "food products that derive over 50 percent of their total caloric value from protein, pro-

tein hydrolysates, amino acid mixtures or combinations of these."

2. In §101.17(d)(1), the warning about use of these protein products by persons taking medication has been reworded. The pertinent sentence now states: "Use with particular care if you are taking medication."

3. In §101.17(d)(2), the tentative final rule establishes different labeling requirements for protein supplements that are promoted as part of a nutritionally balanced diet plan providing 800 Calories or more per day when the diet plan is specified in detail on the label or in labeling that accompanies each package of the product. Labels and labeling of products in this category will be required to bear the following warning statement:

Warning.—Use only as directed in the diet plan described herewith (the name and specific location in labeling of the diet plan may be included in this statement in place of "diet plan described herewith"). Do not use as the sole or primary source of calories for weight reduction.

4. All references to "weight maintenance" have been deleted from the tentative final rule.

5. The label warning proposed in §101.17(d)(2) has been revised to read:

Warning.—Use this product as a food supplement only. Do not use for weight reduction.

This warning as now set forth in §101.17(d)(3) of this tentative final rule would be required on the label and labeling of protein supplements that "derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these and that are specifically promoted for purposes other than weight reduction."

### V. SUMMARY OF THE COMMENTS AND THE COMMISSIONER'S RESPONSES

A total of 250 comments were received in response to the December 2, 1977 proposal. A summary of the points raised in the comments and the Commissioner's responses to them follow:

#### A. ALTERNATIVE COURSES OF ACTION

In the proposal, the Commissioner invited comment on alternative courses of action available in the event that it was concluded that these protein products present a risk to public health that cannot be controlled adequately by the use of label warning requirements. Most of these alternatives involved a partial or total ban of some of the protein products.

1. Several comments simply favored, or opposed, banning liquid protein products. The comments did not generally support their positions with data or information; some of the com-

ments provided testimonial statements to support their positions. For example, several persons stated that they had used these products without harm or side effects with considerable benefit as food supplements. Others urged banning liquid protein products because they or members of their family had become seriously ill or died, and they attributed these consequences to consumption of liquid protein products. None of these comments, however, could be considered as providing clinical or other scientific evidence to support its respective positions.

The Commissioner advises that the provisions of the tentative final rule are based on the scientific and medical evidence on file with the Hearing Clerk; testimonial statements without clinical or other scientific evidence were considered only to the extent that they reflected consumer opinion.

This tentative final rule does not include any provisions to ban any of the protein products mentioned in the proposal. The Commissioner has concluded that the appropriate regulatory response at this time—given the available scientific evidence and the regulatory options under the law—is to require warning label statements on these protein products to ensure that consumers are informed of the health risks associated with extremely low calorie diets, including those consisting primarily of protein. The reasons for this decision are explained below in response to other comments. The Commissioner fully expects that the warnings will control the risk to public health presented by use of protein products as the principal component of very low calorie diets.

2. A number of comments opposed a ban of liquid protein products on the basis that FDA lacked scientific evidence that liquid protein products were the causative agent involved in the reported deaths mentioned in the proposal. Some comments also pointed out that no toxic or poisonous substances have been found in protein supplements, in general, or in liquid protein products in particular.

As explained above, available data strongly suggest that the protein products used by the decedents in the reported cases were responsible for their deaths. The agency is continuing to explore this likelihood. The evidence to date, however, does not suggest that protein supplements or hydrolysates of collagen or other low quality proteins are poisonous or toxic *per se*.

When these products are used as the sole or primary source of calories for extended periods of time in a very low calorie diet (less than 800 Calories per day), serious illness or death may result. Many of these protein products are promoted for use to reduce weight. From popular books on the subject

and from other sources, consumers readily infer that the products can be used safely in very low calorie diets, and there is ample evidence that consumers use them in this manner. Thus, it is apparent that the products have been widely promoted without adequate attention to the risks inherent in their use.

Certain of these products may, under careful medical supervision, ultimately prove to be beneficial in the dietary management of carefully selected cases of obesity. A ban on the sale of these products could prevent further exploration of the value of these products. A requirement for label warnings on the other hand, will, it is expected, alleviate indiscriminate use of these products by persons without medical need and without the expertise to use them safely.

3. In the preamble to the proposal, the Commissioner solicited comments on several alternative legal theories to regulate these protein products under the Federal Food, Drug, and Cosmetic Act. Specifically, comments were sought on deeming protein products to be: (1) "unfit for food" and thus adulterated within the meaning of section 402(a)(3) of the act (21 U.S.C. 342(a)(3)); (2) "unapproved food additives" under sections 201(s) and 409 of the act (21 U.S.C. 321(s) and 348) and thus adulterated within the meaning of section 402(a)(2)(c) of the act (21 U.S.C. 342(a)(2)(c)); and (3) "new drugs" within the meaning of section 505 of the act (21 U.S.C. 355).

These three alternative legal theories were all opposed in the comments. A number of comments contended that the phrase "unfit for food" in section 402(a)(3) of the act applies only to the intrinsic qualities of food, such as odor, texture, and taste, and not to extrinsic qualities such as the intended use of the product. Several comments on the "food additive" alternative pointed out that protein is recognized as safe for use in the human diet for its nutritional value and that it was extensively used before September 6, 1958 (this latter point was presumably an argument that protein is generally recognized as safe (GRAS) based on common use in food before September 6, 1958. (See section 201(s) of the act and 21 CFR 170.30)). Other comments contended that protein supplements are safe under the conditions of their intended use and that improper use by consumers is not an appropriate basis on which to reclassify protein as an "unapproved food additive." Finally, comments on the "new drug" option asserted that protein supplements do not cause weight loss or cure obesity and are not represented for a therapeutic use. The comments argued that

these protein products are therefore not properly classified as new drugs.

As stated above, the Commissioner has decided not to ban the sale or impose other direct limits on the availability of these protein products at this time. Consideration of the validity of the three alternative legal theories, each of which is intended to support a ban on the sale of the protein products, is thus unnecessary.

4. One comment suggested that the act be amended to establish a new class of "medical foods" that would restrict these products to controlled use similar to that for prescription drugs without also subjecting the products to the expensive and time-consuming new drug application process.

The suggestion that there be a category of "medical foods" is worthy of consideration. The public health problem concerning protein products used for weight reduction cannot, however, await enactment of new legislation authorizing such a category of products, but rather must be dealt with using the regulatory authority currently available to FDA.

5. A few comments asked why products that pose health hazards are permitted to be sold, and suggested that the safety of those products be reviewed by FDA before they are marketed.

These protein products are not inherently dangerous; rather, the risks to the health of consumers that the products present arise from the purposes for which they are used and the manner of use. The label warning that would be required under this tentative final rule is directed at the "misuse" problem. If consumers abide by the warning, the risks of using these protein products will be alleviated. Because the products may be helpful and safe when used in carefully selected cases and under rigid medical supervision, a ban would be inappropriate.

Moreover, FDA does not have the authority to require premarket clearance of foods other than those regulated as food or color additives.

6. One comment suggested that instead of banning liquid protein altogether, FDA should require label directions or instructions that advise users to use the product so that only about a pound of weight is lost each week.

It would be neither feasible nor appropriate for FDA to attempt to develop directions for the use of the many protein products that are covered by this tentative final rule. The label warning informs consumers that there are substantial risks associated with these products when used to achieve rapid weight loss and directs consumers to consult a physician.

7. One comment pointed out that very low calorie protein diets were not

designed or intended for use without close medical supervision or for patients with relatively modest degrees of obesity. This comment urged that very low calorie protein diets be restricted to ethical promotion by the medical profession only.

The Commissioner agrees that very low calorie protein diets should not be used without close medical supervision. This tentative final rule would require that the label of protein products inform the consumer of this fact. As discussed above, restriction of these products to use only by the medical profession would require classification of these products as drugs, an approach that is very difficult under the act, and in the judgment of the Commissioner, unnecessary at this time.

8. One comment requested that the "clubs" or groups sponsoring liquid protein weight reduction programs be banned.

The Food and Drug Administration does not have the authority to ban such "clubs" or groups.

9. One comment recommended that protein products be made under quality control standards supervised by FDA.

The Commissioner is not convinced that such a procedure would alleviate the public health problems with which this rulemaking is concerned. There is no evidence to date that poor manufacturing practices caused the deaths associated with protein supplements used for weight reduction. The problem appears to be related to the use of these products in very low calorie diets for extended periods of time; a label warning requirement is a more appropriate solution to the problem.

10. A few comments requested that the problems associated with the use of protein supplements be dealt with by educating consumers about proper nutrition and diet.

The Commissioner agrees that informing consumers about proper nutrition and diet is an important function for FDA. FDA and other agencies have conducted, and will continue to conduct, nutrition information programs. Consumer education programs alone, however, cannot solve the immediate problems associated with the use of protein supplements as the sole or primary source of calories in a very low calorie diet. The effects of education programs are often seen only over relatively long periods; a label warning, which is a form of education, however, will have a more immediate impact on consumer behavior. It is, therefore, the preferable regulatory response to the evidence of risks associated with the use of these protein products.



11. Several comments questioned FDA's authority to promulgate the proposal. These comments asserted that the proposal was arbitrary and capricious and in excess of FDA's statutory authority. One comment asserted that none of the sections of the act cited in the proposal, e.g., sections 201(n), 402(a), 403, 505, and 701(a), provides substantive legal authority for the Commissioner to require the proposed warning statements. One comment asserted that section 402(a) does not specifically grant authority to require a warning statement.

The Commissioner disagrees with the comments. Section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)) provides broad authority to FDA to issue regulations "for the efficient enforcement" of the act. *National Nutritional Food Association v. Weinberger*, 512 F. 2d 688, 695-701 (2d Cir. 1975). Section 403(a) of the act provides that a food is misbranded if "its labeling is false or misleading in any particular"; and section 201(n) of the act provides that in determining whether the label or labeling of a product is false or misleading, it is appropriate to consider both the information contained in, and that which is omitted from, the label and labeling. In light of the evidence of the risks to health associated with the use of protein supplements in very low calorie diets, failure to warn consumers of those risks on the label of protein supplements constitutes omission of a material fact about the products. Omission of that fact renders the label for the products "false or misleading" and the products, therefore, misbranded. The authority of the Commissioner under sections 201(n), 403(a), and 701(a) of the act to issue regulations to impose a warning requirement to prevent the products from being misbranded is well-established. Indeed, these three sections have been the basis for many labeling regulations issued by FDA in recent years. See, for example, 21 CFR 101.9 and Parts 102 and 104.

12. Several comments requested that public hearings be held to gather information about the potential health hazards and benefits derived from use of protein supplements. These comments argued that protein supplements are properly categorized as foods for special dietary use and the sole authority for promulgating regulations for these products is derived from sections 403(j) and 701(e) of the act. Under the formal rulemaking procedures embodied in section 701(e), promulgation of a final regulation would be followed by the opportunity to file objections and requests for a formal evidentiary hearing.

The Commissioner rejects the suggestion that a public hearing be held to gather additional information about the risks and benefits of protein supplements. While public legislative style hearings are often a useful tool to gather information during the administrative process, and, in fact, have been frequently used by FDA for that purpose, such a hearing in this case is not necessary. FDA has obtained extensive information about the protein supplements through the comments on the proposal, the telephone survey, the investigative work of FDA and CDC scientists, and the efforts of the USPHS Task Force. Additional information will, no doubt, be supplied in comments on this tentative final rule. A public hearing to gather additional information would not, therefore, be likely to yield substantial new information that would justify a further delay in issuing a final rule.

The Commissioner also rejects the contention that the warnings that would be required under this tentative final rule must be issued under authority of section 403(j) of the act (21 U.S.C. 343(j)) and, therefore, in accordance with the procedures in section 701(e), which, as the comment noted, would provide for the opportunity for a formal evidentiary hearing before a warning could be required.

Unlike section 403(a) of the act, which embodies a broad prohibition on false or misleading labeling for all food, section 403(j) is narrow: it addresses only the authority of FDA to require a particular type of information on the labels of a category of foods (foods for special dietary use), i.e., information concerning their "vitamin, mineral, and other dietary properties as the Secretary determines to be . . . necessary in order to fully inform purchasers as to" their value for dietary use. Thus, section 403(j) is subject to two limitations: (1) it applies only to foods for special dietary use; and (2) even then only to certain types of information about those foods.

Although there is clearly some overlap between the coverage of section 403(a) and section 403(j), it is also clear that they are not coextensive. Foods for special dietary use are subject to both sections, and compliance with FDA regulations issued under section 403(j) does not obviate the need for the product to comply with regulations issued under other sections of the law, including section 403(a). *National Nutrition Foods Association v. FDA*, 504 F. 2d 761, 775 (2d Cir. 1974); *United States v. An Article of Food . . . Labeled in Part . . . Nutriomin, etc.*, 482 F. 2d 581 (8th Cir. 1973) and *United States v. An Article of Food, etc.*, 377 F. Supp. 746 (E.D.N.Y. 1974).

Contrary to the assertion in the comments, FDA is not restricted to the authority in section 403(j) in issuing regulations that apply to the labels of foods for special dietary use. Instead, FDA may opt to proceed under either section, depending on the particular circumstances and the type of regulation that the agency intends to issue. In this instance, the agency has elected to proceed under sections 201(n), 403(a), and 701(a) of the act. Those sections do not require, as does section 701(e), that a formal evidentiary hearing be held, and unless comments on this tentative final rule persuade the Commissioner that he is required to convene one, no hearing will be held.

13. A few comments opposed the proposal on procedural grounds, asserting that not all of the material relied on by the Commissioner in promulgating the proposed rule was placed on file with the Hearing Clerk as required by § 10.40 (b)(1)(iii) (21 CFR 10.40(b)(1)(iii)). In addition these comments argued that pertinent background information was not readily available in response to requests under the Freedom of Information Act and, thus, could not be properly reviewed within the comment period on the proposal. The comments also stated that because the proposal was issued during a holiday season, the 30-day comment period was unreasonably short.

The Commissioner acknowledges that, through oversight, some of the data and information FDA relied on in issuing the proposal were not on file with the FDA Hearing Clerk when the proposal was published in the *FEDERAL REGISTER*, or otherwise readily available to the public. This oversight, was corrected promptly after it was brought to the Commissioner's attention. Since then, all information on the use of protein supplements in very low calorie diets has been placed on file with the FDA Hearing Clerk upon receipt. In addition, much of this information has been made available to the interested persons in response to requests under the Freedom of Information Act. In light of the additional opportunity for comment on this tentative final rule, the issues raised by the comments on the brevity of the initial comment period and the unavailability of the underlying data are moot.

14. Some comments objected to the proposal on the grounds that a meeting held on October 20, 1977 between five clinicians specializing in the treatment of obesity and several FDA employees was convened in violation of the Federal Advisory Committee Act (5 U.S.C. App. I) because the meeting was not open to participation by interested persons and because minutes of

the meeting and other pertinent documents were not readily available to the public. The comments also argued that any information received at this meeting of an ad hoc "advisory group" could not be relied upon as a basis for the proposed action until such time as the meeting was properly convened.

The arguments raised by these comments have also been made in a lawsuit filed against FDA. *National Nutritional Foods Association, et al. v. Califano, et al.*, 77 Civ. 6083 (LPG) (S.D.N.Y., December 15, 1977). Contrary to the comments and the arguments made by the plaintiffs in the lawsuit, the October 20 meeting of the experts to share their views with FDA on a then rapidly developing public health problem was not an advisory committee meeting governed by the Federal Advisory Committee Act (FACA). Rather, the meeting was a one-time session that was able to be convened only because of the coincidental presence of the experts in the Washington, D.C. area at the time when reports of illness and injury from the protein products were beginning to reach FDA.

The group of five independent clinicians was not an "advisory committee" as that term is used in the FACA. The term connotes some type of formally structured group with a fixed membership and a defined purpose that meets on a periodic basis. In contrast, the group assembled on October 20 had no formal structure or future function as an organized group. It was convened on 2 days' notice for an informal one-time meeting to discuss the hazards of the use of protein supplements in weight reduction programs. Courts have recognized that the term "advisory committee" as used in the FACA is not all-inclusive. *Nader v. Baroody*, 396 F. Supp. 1231 (D.D.C. 1975), *vacated on appeal for mootness*, App. No. 74-1675 (D.C. Cir. 1977). Other cases in which courts have found groups to be advisory committees within the meaning of the FACA also support the view that the October 20 meeting was not an advisory committee meeting. See, *Center for Auto Safety v. Tieman*, 414 F. Supp. 215 (D.D.C. 1976); *Wolfe v. Weinberger*, 403 F. Supp. 238 (D.D.C. 1975); *Gates v. Schlesinger*, 336 F. Supp. 797 (D.D.C. 1973).

The Commissioner advises that all documents made available to, or prepared for or by, the group of five clinicians who attended the October 20 meeting have been placed on file with the FDA Hearing Clerk. Thus, in addition to the other data on file, interested persons may review, assess, and comment on the advice provided by the five experts.

As noted above, the contentions made in the comments have also been made in a lawsuit against FDA. The

court in *National Nutritional Foods Association* has declined to grant any relief against FDA on the basis of the allegations concerning the plaintiff's claims (Opinion No. 47567, filed August 29, 1978). In light of the disposition of that lawsuit, the Commissioner considers this matter to be moot.

# C. SCIENTIFIC ISSUES

15. Several comments expressed the opinion that no particular protein is responsible for the reported deaths because protein is a necessary nutrient to sustain life. The comments argued that any food, which is used as the major source of calories in a diet where calorie consumption is reduced to 200 to 400 calories per day, would most likely lead to the same results. The comments objected to the proposed warning statement for protein supplements unless warning statements were required for other foods promoted for weight reduction, because such action is discriminatory and misleading.

The Commissioner rejects these arguments. Neither the proposed warning nor the warning labeling required by this tentative final rule states that protein itself is harmful or causes death. The warning labeling is directed at correcting an existing public health problem associated with the use of protein products for weight reduction.

In addition, there is no evidence to indicate that any other foods promoted for weight reduction have created a similar public health problem. All of the reports of illness and death summarized above have been associated with one or more of the protein products identified in this tentative final rule.

Many of these protein products are explicitly promoted for use to reduce weight; their use is also encouraged by popular books and other material from which consumers may reasonably infer that these protein products can be safely used in very low calorie diets. Because the evidence suggests that the dietary regimen should be used only under close medical supervision, consumers must be informed of this fact; the proposed label warning statements will so inform consumers.

16. A number of comments objected to the breadth of the proposed warning on the basis that not all protein products were implicated in the reported deaths. The comments argued that a warning statement should not be required for high quality protein products because there is no evidence that these products are harmful. Many comments were accompanied by reports and copies of scientific papers or studies in an effort to support assertions that particular products were safe when used as directed and there-

fore should not be subject to the proposed label warning requirements.

The Commissioner recognizes that many of the high quality protein products on the market can be safely used for a limited period of time when consumed as part of a nutritionally balanced diet plan that provides 800 calories or more per day. The Commissioner is also mindful that without proper guidance these same products may be used by consumers as the sole or primary source of calories in a very low calorie diet (e.g., less than 800 calories per day).

On the basis of the evidence currently available, the Commissioner concludes that there are significant health risks associated with any diet that severely reduces caloric intake or that creates a large negative calorie balance. It also seems likely that the greater the calorie deficit is, the greater the health risk becomes.

The metabolism of the body changes when the diet provides fewer calories per day than the body uses. The kinds of metabolic changes and the degree to which these changes occur depend upon the actual calorie deficit, the rate at which the calorie deficit is achieved, and the composition of the diet providing the calories. It can be shown, for example, that a significant calorie deficit can increase the risk of infection (Jonxis, J. H. P., *Nutrition Reviews*, 4:97, 1946). In patients who are extremely obese, these risks must be taken into consideration when assessing the potential increase in health benefits to be derived from successful loss of weight.

If a negative calorie balance is permitted to continue for too long in an unsupervised manner, death is certain to result (Brozek, J., et al., *American Review of Soviet Medicine*, 4:70, 1946). The rate at which the overall caloric deficit is achieved can also alter the risk of serious harm or death. That is to say, a drastic caloric deficit achieved in a short period of time may present a serious health hazard without causing a significant change in body fat or protein stores (Garnett, E. S., et al., *Lancet*, 1:914, 1969; and Duncan, G. G., et al., *Annals of the New York Academy of Sciences*, 131:632, 1965). In contrast, there is evidence that prisoners of war interred in concentration camps (Pollack, H., *Nutrition Reviews*, 4:63, 1946; and unpublished data) and civilians in Western Holland during the winter of 1944 (*Nutrition Reviews*, 4:28, 1946; and Jonxis, J. H. P., *Nutrition Reviews*, 4:97, 1946) were able to subsist on approximately 800 to 1,200 calories per day for extensive periods of time while catabolizing virtually all body fat and significant amounts of body protein before dying from starvation and the rigors of war.



On the other hand, it has been shown that total starvation can result in death while significant body fat remains unmetabolized. It is unknown whether this difference is due to the magnitude of the caloric deficit *per se* or whether deprivation of other essential nutrients is a critical contributing factor in causation of death. Common experience from clinical research (*Nutrition Reviews*, 24:6, 1966; and Blondheim, S., et al., *Lancet*, 1:250, 1965) and from the general practice of consumers indicates that a wide variety of nutritionally balanced diets providing on the order of 800 to 1,000 calories per day for limited periods of time can be used for weight reduction without the need for close medical supervision. It is advisable, however, for those wishing to lose weight to consult with a physician before undertaking any weight reducing program. When the daily calorie intake is reduced to 200 to 400 calories, however, such as in the protein-sparing modified fast (PSMF), the health risk is significant enough to require the close medical supervision of a professional knowledgeable of fasting metabolism and skilled in the clinical management of obesity.

The Commissioner finds it significant that most of the comments from the scientific community, including those promoting the use of a PSMF program, were in agreement that a low calorie diet (less than 800 calories) should not be used in the treatment of obesity without proper medical supervision. Furthermore, most scientists agreed that a diet composed only of protein or protein-derived products supplying only a small portion of daily caloric needs would be contraindicated for infants, children, pregnant or nursing women, and most individuals with renal, hepatic, or serious vascular disorders.

Consumers, therefore, need to be informed of the serious health risk of undertaking such a diet without proper medical supervision. The tentative final rule does, however, distinguish between those protein products that are promoted generally for weight control and those promoted as part of a nutritionally balanced diet providing 800 Calories or more per day. The Commissioner agrees that for the latter products the warning should be limited to a caution against possible abuse.

The tentative final rule does not distinguish between the protein products on the basis of the biological quality of the proteins. One of the 16 women whose deaths were unassociated with antecedent disease was utilizing a powdered product containing milk-derived proteins that are widely recognized for their high biological quality. These high quality proteins contributed about 200 of a total intake of 380 Calo-

ries per day for approximately the last half of the individual's 24-week weight reduction diet. The remaining 180 Calories per day came from carbohydrate and a second, gelatin-derived powdered protein product. During the first half of the 24-week diet, a typical gelatin-derived "predigested liquid protein" product was consumed in an amount sufficient to provide approximately 360 Calories per day. In a second case from among the 16 "cardiac" deaths without antecedent disease, the individual had followed for the major part of her dieting period a weight loss regimen which consisted of a daily intake of four cooked egg whites, the equivalent of 15 grams of protein from a gelatin-derived powdered protein product and a small amount of a fluid, hydrolyzed, plant protein concentrate product. Details of both of these deaths are on file with the FDA Hearing Clerk as Cases 37 and 29, respectively.

Hence, there is direct evidence to suggest that neither the physical form (i.e., aqueous solution or dehydrated solid) nor the biological quality of these protein products or dietary supplements is a major factor for consideration relative to causation of death. In addition, there remains the uncertainty of the relative importance of protein-derived calories as contrasted with very low caloric intakes, regardless of the source of calories. For these reasons, the thrust of this tentative final rule is directed at adherence to very low caloric protein diets and not the use of liquid or powdered, high- or low-quality protein products *per se*. The Commissioner recognizes that gaps exist in the scientific understanding of the biological effects of long-term use of protein products for rapid weight loss, and adherence to very low caloric diets generally. Nevertheless, the knowledge that does exist indicates an association between death and prolonged adherence to a very low caloric protein diet and is ample justification for this aspect of the tentative final rule.

To fully inform consumers of the risk associated with use of protein products in very low caloric diets, the requirement for a warning label would extend to all protein products that are promoted for weight reduction and that derive over 50 percent of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or combination of these. The extension of the warning to these products is justified because the products appear to pose similar risk regardless of protein quality.

There are several traditional foods such as cottage cheese and ordinary gelatin that derive over 50 percent of their calories from protein. The warning will not be required on foods that

derive over 50 percent of their total caloric value from proteins but are not promoted or represented for use to reduce weight. Thus ordinary gelatin, similar in composition to the "predigested liquid protein" products would not be required to bear the warning unless the gelatin was promoted for use to reduce weight. Some of these foods, however, may be offered for sale as "reduced calorie" or "low calorie" foods in accordance with the provisions of § 105.66 (21 CFR 105.66) published in the *FEDERAL REGISTER* of September 22, 1978 (43 FR 43248).

For purposes of this regulation, foods labeled in accordance with the provisions of § 105.66 with representations of "low calorie" or "reduced calorie" are exempt from the label warning requirements provided no other representations are made with respect to the usefulness of the food in reducing caloric intake or body weight.

17. Several comments asserted that the reported illnesses and deaths were caused by acts of omission or commission in the administration of the protein-sparing modified fast (PSMF) program. These comments argued that the protein products currently available are not inherently unsafe, not even when used as part of adult obesity therapy, if proper supervision by professionals knowledgeable of fasting metabolism and trained in obesity therapy is obtained. One comment pointed out that the PSMF diet is accepted therapy by leading physicians in the field of "bariatrics" (study of the treatment of obesity).

The Commissioner has reviewed the data and comments on this issue and concludes that some diet plans, such as the PSMF diet, may have potential benefits when used as part of a multidisciplinary approach in the treatment of severe obesity if used under controlled circumstances and with proper medical supervision. Those potential benefits, however, do not negate the fact that there are health risks associated with such therapy.

The fact remains that products used for this type of controlled therapy are sold directly to consumers who may not be under proper medical supervision. The evidence of record shows that for some protein products, as defined in this tentative final rule, there are health risks associated with these products when used to lose weight. These risks should be made known to consumers.

18. Most comments from the scientific community, including those health professionals using the PSMF program in the treatment of obesity, agreed that a low caloric (less than 800 Calories) protein diet should not be used without proper medical supervision, and that such a diet would be contraindicated for infants, children,

pregnant or nursing women, and individuals with renal, hepatic, or serious vascular disorders. There was considerable difference of opinion, however, concerning an appropriate regulatory response that would achieve the objective of ensuring that consumers are informed of the health risks associated with the use of protein products in low caloric dietary regimens.

Most of the alternative courses of action have been discussed above. The Commissioner's tentative conclusion is that the warning label requirements set forth below will be sufficient to ensure that consumers are informed of the risks associated with the use of protein products as the sole or primary source of calories in a low caloric diet and will minimize the use of these products to achieve rapid weight reduction without proper medical supervision.

19. Several comments offered possible explanations for the reported illnesses or deaths. One comment suggested that the illnesses and deaths were caused by an amino acid imbalance; the comment included references to scientific papers that discussed the effects of amino acid imbalance in man. Other possible direct causes of death or illness mentioned in comments are electrolyte imbalances involving potassium, calcium, or magnesium deficiency or a complex combination of electrolytes. Also mentioned as a possible cause was release of toxic substances from the fat depots of the body after weight loss.

A comment from a physician stated that he had observed several cases of alopecia of the telogen effluvium type (a sudden onset of hair loss in a generalized pattern). The comment asserted that this hair loss was caused by an amino acid deficiency or essential trace metal deficiency as a result of recent weight loss through use of hydrolyzed protein products.

The Commissioner advises that FDA is continuing to investigate all of the possible causes of illnesses and deaths mentioned above. The evidence available now, however, suggests that rapid weight loss in and of itself presents serious risks to individuals. The Commissioner is convinced that very low caloric protein diets can present serious health risks to individuals. The Commissioner is also aware that obesity itself presents certain health risks. The proposal has generated many comments which assert that a protein-sparing modified fast dietary regimen used as part of a multidisciplinary approach to obesity therapy has proved beneficial to many obese individuals. None of these comments, however, suggests that the weight loss benefits were gained without some risk.

The warning label requirements in this tentative final rule are not meant

to imply that risk can be avoided by consultation with a physician. A physician can only reduce these risks by effective supervision and monitoring of the patient.

The Commissioner believes that the label warning requirements and the associated publicity concerning the possible health risks of a very low caloric protein diet will result in a heightened awareness by individual patients of the need for extreme care in undertaking a diet regimen as well as the need to consult a physician before doing so. This awareness is expected to generate a candid dialogue between doctors and patients concerning the risks of any diet therapy as well as the benefits provided by weight reduction.

#### D. SCOPE OF THE REGULATION

A majority of the comments supported FDA's efforts to require label warnings on protein products for which there is sound evidence that their use is associated with illness or death. Many of the comments, however, objected to the scope of the proposed regulation and opposed several aspects of the proposed warning language that describes the kinds of products that would be required to bear a warning label.

20. Several comments were opposed to proposed § 101.17(d)(1) which would have required "any product composed essentially of protein or protein hydrolysates which is intended for use in a weight reduction or maintenance dietary regimen" to bear the warning label. The comments stated that this language was both vague and overly broad because it could be interpreted to apply to a variety of products which pose no health risks. Many of the comments listed specific examples of protein products that they argued should not be required to bear the proposed warning statement because of the absence of evidence that their use presents any risks to health.

The tentative final rule has been revised to define more clearly the products that are required to bear a label warning statement. The primary group of products affected are those protein products that derive 50 percent or more of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or a combination of these. The three warnings that would be required are tailored to categories of products depending on the representations made about their use and the manner of use intended for them by their manufacturer or promoter.

21. Several comments stated that the warning label requirement should apply only to "liquid protein products" that are derived from whole protein sources or are hydrolysates of

proteins which are of low nutritional value, such as collagen or gelatin, because these are the products associated with the reported deaths and were clearly the products of concern in discussions between FDA and the ad hoc advisory group. These comments argued that the protein quality of these products differs markedly from the "powdered protein" products available on the market that have a high protein quality and are safe and nutritious protein foods when used in the traditional manner as a food supplement. Several comments provided specific examples of dietary programs that they argued were recognized as safe by the nutrition and medical community.

The Commissioner acknowledges that these comments have some merit. When used as part of a structured, nutritionally balanced diet providing 800 or more Calories per day, protein products of good biological quality are considered to be safe when used for a limited period; however, the Commissioner has decided that no distinction should be made on the basis of protein quality. The course of action described by this tentative final rule distinguishes between those protein products that are generally promoted for weight control and those that are promoted as part of a structured nutritionally balanced diet providing 800 Calories or more per day when this diet plan is specified in detail on the label or in the labeling.

The warnings are directed at the concern that protein products not be used by consumers as the sole or primary source of calories in the diet to achieve rapid weight loss without close medical supervision.

22. Several comments were opposed to the language of proposed § 101.17(d)(2), which states, "Special dietary food products which are composed essentially of protein or protein hydrolysates, or which use the word 'protein' in their statement of identity, or otherwise emphasize the word 'protein' in their label or labeling, shall bear the following warning if they are not intended for use in a weight reduction or maintenance dietary regimen."

The comments argued that the language of this section was vague and overly broad and included products that were never intended to be used for weight reduction. Many more comments strongly objected to the inclusion of a provision for a warning statement requirement solely because the word "protein" is emphasized in labeling. These comments argued that many regulations promulgated by FDA permit or require the term "protein" in the statement of identity for that food, and that these products should not be required to bear a warning label.



The Commissioner has amended the tentative final rule to define more clearly the products that are required to bear a label warning statement. Under the tentative final rule, protein supplements that are promoted for purposes other than weight reduction, but which derive over 50 percent of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or a combination of these, would be required to bear the following warning:

Warning.—Use this product as a food supplement only. Do not use for weight reduction.

#### E. TEXT OF THE WARNING STATEMENT

Several comments suggested alternative or modified statements that they argued would clarify or reduce the severity of the warning.

23. One comment asserted that the wording sequence of the warning in proposed § 101.17(d)(1) insinuates that protein substances are hazardous and leaves the impression that protein is a toxic or poisonous substance. The comment suggested modifying the wording of the warning to clarify that it is the manner in which protein substances are used, rather than the protein itself, which is the basis for the warning. The comment suggested the following alternative warning statement:

Warning.—Very low calorie protein diets may cause serious injury or death WHEN USED WITHOUT MEDICAL SUPERVISION FOR WEIGHT REDUCTION OR MAINTENANCE. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children or pregnant or nursing women.

The commissioner does not agree with that comment. The text of the warning statement in proposed § 101.17(d)(1) of the December 1977 FEDERAL REGISTER document does not state that protein is a toxic or poisonous substance but rather that "very low calorie protein diets" may cause serious illness. In view of the fact that some of the reported deaths were of individuals under the supervision of a doctor, it would be misleading to permit a warning, such as the one suggested by the comment, which implies that there are no risks involved when very low calorie protein diets are undertaken with medical supervision. These health risks still exist. Although medical professionals trained in the treatment of obesity may be able to reduce these risks through monitoring the patient carefully, most physicians will agree that there will still be risks associated with such treatment.

24. One comment argued that the hazard of death implied by the proposed warning statement was unjustified. In addition, this comment argued

that the reference to specific medical conditions in the proposed warning should be omitted because this would dilute the overall impact of the warning by implying that only consumers with specific medical problems need to be concerned. Accordingly, the comment suggested that the warning statement be revised to read as follows:

Warning.—Do not use for rapid weight loss without continual supervision by a physician knowledgeable with such therapy.

The Commissioner rejects this alternative text for the warning statement. There is no doubt that consumers who adhere to a very low calorie protein diet (less than 800 Calories per day) without proper supplementation and monitoring by a physician risk serious illness that may be fatal. In addition there are medical conditions, identified by those physicians commenting on the proposal, for which a protein-sparing modified fast is contraindicated. The warning proposed by the comment would not adequately inform consumers of those facts.

25. Several comments suggested much more general warning statements such as: "Formula products used for rapid weight loss require obligatory supervision of this therapy by a physician knowledgeable with such therapy" and "Warning: very low calorie diets containing 400 Calories or less per day must be used under the direct supervision of a physician."

The Commissioner does not find any of these suggested alternatives satisfactory because they do not adequately address the health risks involved. The reasons for this conclusion have already been stated in this preamble.

26. One comment objected to the lack of proper definition of the phrase "very low calorie protein diet" and suggested that the warning be amended to read as follows: "Not to be used for weight reduction nor as a sole diet without proper medical supervision. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children or pregnant or nursing women."

The Commissioner rejects this suggested alternative because it does not properly identify the health risk and goes no further in clarifying what is meant by a "very low calorie protein diet." The approach established by this tentative final rule does distinguish between those products promoted generally for weight reduction and those products promoted for use as part of a nutritionally balanced diet that contributes 800 or more Calories per day. Any lower caloric intake would be considered a very low calorie diet.

27. Other comments suggested that powdered protein products were distinct from the "predigested liquid pro-

tein" products, were not harmful to health, and did not present the same problems of misuse. These comments argued, therefore, that these products should not be required to bear a warning statement but suggested instead a label statement that could be placed on the label as part of the directions for use. One comment suggested the following statement: "Anyone considering a weight reduction program should first obtain competent medical advice. Use this product as part of a well balanced diet."

One other comment suggested that powdered proteins bear the following:

Warning.—If you are under medical care and/or if you plan to lose twenty-five pounds, please consult with your doctor before beginning this or any other dietary program.

The Commissioner does not agree. Many of the powdered protein products are used in the same manner as the protein hydrolysates and the evidence indicates that the health risks are similar for liquid or powdered protein products used as the sole or primary source of calories in a very low calorie diet. Because there is no substantial difference between a liquid protein hydrolysate and the same product after dehydration, the physical form in which the protein product is sold is not important in assessing the health risks associated with use of the product. The provisions of this tentative final rule do, however, distinguish between those products promoted in a general way for weight reduction and those promoted for use in a nutritionally balanced diet plan providing 800 or more Calories per day.

28. A few comments suggested that protein products be divided into categories on the basis of nutritional quality. Several recommended that protein products with a protein efficiency ratio (PER) of 50 percent that of casein be treated differently from low quality protein products and suggested alternative warning statements for the two types of protein products. For products composed essentially of protein of poor nutritional quality that are labeled for use in weight reduction, the following warning was suggested:

Warning: The protein in this product is of poor nutritional quality. Low calorie diets provided primarily by protein of this quality may cause serious side effects such as \_\_\_\_\_ and even illness and death.

DO NOT USE THIS PRODUCT AS THE SOLE OR PRIMARY SOURCE OF CALORIES FOR WEIGHT REDUCTION WITHOUT PRIOR MEDICAL EXAMINATION AND CONTINUED MEDICAL SUPERVISION. Do not use for any purpose without medical advice, especially if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

For products composed essentially of protein of good nutritional quality that are labeled for use in weight reduction, the comment suggested the following warning:

Warning: Low calorie diets provided primarily by protein may cause side effects such as \_\_\_\_\_

Do not use this product as the sole or primary source of calories for weight reduction without prior medical examination and continued medical supervision.

For products composed essentially of protein of poor nutritional quality that are not labeled for use in weight reduction, the comment suggested the following warning:

Warning: The protein in this product is of very poor nutritional quality. DO NOT USE THIS PRODUCT AS THE SOLE OR PRIMARY SOURCE OF CALORIES FOR WEIGHT REDUCTION. Low calorie diets provided primarily by protein of this quality may cause side effects such as \_\_\_\_\_ and even illness and death.

For products composed essentially of protein of good nutritional quality that are not labeled for use in weight reduction, the comment suggested the label statement:

Do not use as the sole or major source of calories without medical supervision.

There is evidence to suggest that even high quality protein products pose a health risk when used as the sole or primary source of calories in a very low calorie dietary regimen (e.g., less than 800 Calories per day). The range of warnings suggested by the comment would not adequately take this fact into account.

29. A few comments recommended that the proposed warning apply only to protein products or special dietary foods which derive 60% (some suggested 50%) of their caloric value from protein or protein hydrolysates.

The Commissioner has adopted this approach in the tentative final rule in an attempt to define more clearly the phrase "composed essentially of protein" used in the proposal. The FTC has issued a proposed trade regulation on advertising and labeling of protein supplements. One proposed provision of the FTC rule would require a strong warning for "any protein supplement which derives 50 percent or more of its calories from the protein content of the food." Although the FTC proceedings in large measure antedated the current public health problem, the Commissioner concludes that the "50 percent of calories" definition is appropriate here also. This definition of protein products covers all of the products currently being used under the protein-sparing modified fast and other very low calorie dietary regimens.

#### F. MISCELLANEOUS COMMENTS

30. One comment requested that the proposed regulation be clarified to exempt bulk protein ingredients used as components of other foods from the label warning requirements.

The Commissioner advises that, under the provisions of the tentative final rule, bulk protein products sold only for use as components of other foods are not subject to the label warning requirements. Therefore, no specific exemption from these label warning requirements is needed.

31. Several comments suggested that in light of the FTC proceedings relative to protein supplement labeling, the FDA should either coordinate its proposed regulation with that of the FTC or defer its proposal until the FTC proceeding is completed. Additionally, the Federal Trade Commission submitted comments on the proposal, requesting that the proposed regulation specifically state that the warning label requirements promulgated by the FDA are separate from and in addition to labeling requirements established by the FTC for protein supplements.

The Commissioner advises that FDA has worked closely with the FTC throughout the investigation of health problems associated with protein supplements. This tentative final rule includes a provision which specifically states that the warning label requirements promulgated by FDA are in addition to, and separate from, any labeling requirements established by the FTC for protein supplements.

Tentative effective date: The Commissioner is proposing that the label and labeling of foods introduced or delivered for introduction initially into interstate commerce on or after the 60th day following publication of a final regulation governing the labeling of protein products shall bear the warning statement appropriate for that food.

The Commissioner has carefully considered the environmental effects of the tentative final rule and because the proposed action will not significantly affect the quality of the human environment has concluded that an environmental impact statement is not required. A copy of the Environmental Impact Analysis Report has been filed with the FDA Hearing Clerk.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a) 371(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 101 be amended in § 101.17 by adding new paragraph (d) to read as follows:

#### § 101.17 Food labeling warning statements.

(d) *Protein products.* (1) The label and labeling of any food product that derives more than 50 percent of its total caloric value from either whole protein, protein hydrolysates, amino acid mixtures or a combination of these and that is represented on the label or in labeling or is otherwise promoted for use to reduce weight shall bear the following warning:

Warning.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION WITHOUT MEDICAL SUPERVISION. Use with particular care if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

Food labeled in accordance with the provisions of § 105.66 of this chapter and bearing representations of "low calorie" or "reduced calorie" are exempt from the label warning requirements of this paragraph if no other representations are made with respect to the usefulness of the food in reducing caloric intake or body weight.

(2) Products described in paragraph (d)(1) of this section are exempt from the labeling requirements of that paragraph if the protein products are promoted as part of a nutritionally balanced diet plan providing 800 or more calories (kilocalories) per day and the label or labeling of the product specifies the diet plan in detail and the label and labeling bear the following warning statement:

Warning.—Use only as directed in the diet plan described herewith (the name and specific location in labeling of the diet plan may be included in this statement in place of "diet plan described herewith"). Do not use as the sole or primary source of calories for weight reduction.

(3) The label and labeling of protein supplements that derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these and that are specifically promoted for purposes other than weight reduction shall bear the following warning:

Warning.—Use this product as a food supplement only. Do not use for weight reduction.

(4) The provisions of this paragraph are separate from and in addition to any labeling requirements promulgated by the Federal Trade Commission for protein supplements.

(5) The warning statements required by paragraph (d) (1), (2), and (3) of this section shall appear prominently and conspicuously on the principal display panel of the package label and on any other labeling. The warning state-



ments shall be printed in bold letters and shall be enclosed by lines forming a rectangle in an area separated from other written, printed, or graphic matter. The capitalized sentences in paragraph (d)(1) of this section shall be so capitalized on all labels and labeling. The height of the printed letters comprising the warning statement required by paragraph (d)(1) of this section shall not be less than one-half of the height of the largest type appearing on the label of the product. In no case shall the warning statement be printed in letters less than 1/16 of an inch. The warning statements required by paragraph (d) (2) and (3) of this section shall be printed in letters no less than 1/16 of an inch.

Interested persons may, on or before February 27, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this tentative final rule. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1978.

DONALD KENNEDY,  
Commissioner of Food and Drugs.  
(FR Doc. 78-36219 Filed 12-28-78; 8:45 am)

#### [4110-03-M]

(Docket No. 75N-0318)

#### PART 105—FOODS FOR SPECIAL DIETARY USE

##### Label Statements

AGENCY: Food and Drug Administration.

ACTION: Extension of Effective Date of Final Rule.

SUMMARY: This notice extends the period of time for compliance with the labeling requirements for special dietary foods used in reducing or maintaining body weight or caloric intake and in the diet of diabetics.

DATE: All products initially introduced into interstate commerce after July 1, 1980, shall comply with the labeling requirements set forth in §§ 105.66 and 105.67.

FOR FURTHER INFORMATION CONTACT:

Taylor M. Quinn, Bureau of Foods (HFF-300), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-245-1243.

**SUPPLEMENTARY INFORMATION:** In the FEDERAL REGISTER of September 22, 1978 (43 FR 43248), the Food and Drug Administration (FDA) issued a final order setting forth regulations concerning label statements on foods used in reducing or maintaining body weight or in the diet of diabetics and related misleading label statements on other foods.

The final order established a compliance date of July 1, 1979, for the initial introduction into interstate commerce of such foods.

The Commissioner of Food and Drugs has received a petition from the National Food Processors Association (NFPA) requesting a delay of the effective date of the regulation from July 1, 1979, to July 1, 1981. The Commissioner also has received similar requests from CFS Continental and International Dairy Queen, Inc., (IDQ) concerning the effective date of the regulation.

The NFPA and IDQ petitions and the CFS request state that the effective date of July 1, 1979, would not allow enough lead time to reduce current label inventories substantially or to obtain new labels in time to comply with the effective date.

Further, the NFPA petition states that most producers of dietary canned foods have just completed their seasonal canning and have substantial inventory of shelf-stable products, all of which cannot be shipped before July 1, 1979.

The NFPA and IDQ petitions and the CFS Continental letter are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

The Commissioner has reviewed the petitions and the letter of request and has determined that there are grounds for extending the effective date of compliance with §§ 105.66 and 105.67 (21 CFR 105.66 and 105.67). However, the Commissioner does not agree that compliance should be delayed as requested until July 1, 1981.

As pointed out in the NFPA petition, the September 22, 1978, publication of the special dietary foods labeling regulation was the culmination of over 15 years of rulemaking. The labeling requirements promulgated had been the subject of a public hearing and a tentative final order. The publication of the final order resolved those questions and comments raised by the publication of the tentative final order. In the Commissioner's opinion, all interested parties have had adequate time to be heard, and, with the publication of the final order, the regulations should be implemented as soon as it is practical to do so.

The Commissioner believes it is not in the best interest of consumers to

delay the required labeling of these special dietary foods any longer than is necessary to allow adequate time for the purchase of new labels and sale of any currently labeled foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403 (a) and (j), 701 (a) and (e), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055, 70 Stat. 919 as amended (21 U.S.C. 321(n), 343 (a) and (j), 371 (a) and (e))), and under authority delegated to the Commissioner (21 CFR 5.1), the effective date for compliance with the regulations set forth in 21 CFR 105.66 and 105.67 in the FEDERAL REGISTER of September 22, 1978 (43 FR 43248) is hereby extended from July 1, 1979, to July 1, 1980, at which time all products initially introduced into interstate commerce shall comply.

Dated: December 21, 1978.

JOSEPH P. HILL,  
Associate Commissioner  
for Regulatory Affairs.

(FR Doc. 78-36220 Filed 12-28-78; 8:45 am)

#### [4110-03-M]

#### SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### Sulfisoxazole Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect a previously approved new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for safe and effective use of sulfisoxazole tablets as an antibacterial in dogs and cats. The product was the subject of an evaluation by the National Academy of Sciences—National Research Council, Drug Efficacy Study Group (NAS/NRC). The application was subsequently supplemented in accordance with the conclusions of the NAS/NRC evaluation.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

**SUPPLEMENTARY INFORMATION:** Fort Dodge Laboratories, Fort Dodge, IA 50501, is sponsor of an NADA (7-981V), which was originally approved

May 7, 1951. The product was the subject of an NAS/NRC evaluation published in the FEDERAL REGISTER of February 19, 1969 (34 FR 2366).

The NAS/NRC concluded that: (1) These products are probably effective in the treatment of bacterial infections caused by organisms sensitive to sulfisoxazole; (2) label changes are needed to properly qualify each disease claim as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)"; if the disease cannot be so qualified, the claim must be dropped; (3) frequency of administration is inadequate; and (4) data should be provided to show that the tablets will disintegrate in the gastro-intestinal tract of the medicated species to provide the recommended therapeutic dose.

The Food and Drug Administration concurred with the conclusions of the NAS/NRC evaluation.

Fort Dodge Laboratories responded by submitting a supplemental application which provided revised labeling and bioavailability data in accordance with the conclusions of the NAS/NRC evaluation. Accordingly, the application has been upgraded from probably effective to effective status.

For similar products having the same conditions of use, applications need not include efficacy data as specified by §§ 514.1(b)(8)(ii) or 514.111(a)(5)(vi) of the animal drug regulations (21 CFR 514.1(b)(8)(ii) or 514.111(a)(5)(vi)), but approval may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs, on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

This action, reflecting an approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Since the NADA was approved before July 1, 1975, a summary of safety and effectiveness data and information submitted in accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) to support this approval is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2330, to read as follows:

##### § 520.2330 Sulfisoxazole tablets.

(a) *Specifications.* Each tablet contains 260 milligrams (4 grains) of sulfisoxazole.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount.* Administer one tablet orally per 4 pounds of body weight.<sup>1</sup>

(2) *Indications for use.* Use in dogs and cats as an aid in treatment of bacterial pneumonia and bacterial enteritis when caused by organisms sensitive to sulfisoxazole.<sup>1</sup>

(3) *Limitations.* Repeat dosage at 24-hour intervals until 2 to 3 days after disappearance of clinical symptoms. (Administration of one-half daily dosage at 12-hour intervals or one-third daily dosage at 8-hour intervals will provide a more constant blood level.) Provide adequate supply of drinking water. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian.<sup>1</sup>

*Effective date.* This regulation is effective December 29, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: December 13, 1978,

LESTER M. CRAWFORD,  
Director, Bureau of  
Veterinary Medicine.

(FR Doc. 78-36221 Filed 12-28-78; 8:45 am)

#### [4110-03-M]

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### Levamisole Phosphate Injection

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co. for Cyanamid Agricultural de Puerto Rico, Inc., providing for subcutaneous use of a 13.65 percent levamisole phosphate injection for the treatment of *Trichostrongylus axei* infections in cattle in addition to other approved anthelmintic uses.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTRACT:

William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

<sup>1</sup>These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

**SUPPLEMENTARY INFORMATION:** The American Cyanamid Co. filed a supplemental new animal drug application (102-437V) for Cyanamid Agricultural de Puerto Rico, Inc., P.O. Box 243, Manati, P.R. 00701 providing for subcutaneous use of a levamisole phosphate injection containing the equivalent of 13.65 percent levamisole hydrochloride for the treatment of cattle for *T. axei* infections in addition to other approved anthelmintic uses. The drug was originally approved by publication in the FEDERAL REGISTER of May 12, 1978 (43 FR 20489). Approval of this supplement does not constitute reaffirmation of the safety of residues resulting from use of the drug.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.1244 *Levamisole phosphate injection* is amended in paragraph (c)(2)(i) by revising the phrase "stomach worms (*Haemonchus*, *Ostertagia*)" to read "stomach worms (*Haemonchus*, *Trichostrongylus*, *Ostertagia*)."

*Effective date.* This regulation is effective December 29, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: December 21, 1978.

TERENCE HARVEY,  
Acting Director, Bureau of  
Veterinary Medicine.

(FR Doc. 78-36222 Filed 12-28-78; 8:45 am)

#### [4210-01-M]

#### Title 24—Housing and Urban Development

#### CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION



**SUBCHAPTER C—MANAGEMENT AND  
LIQUIDATING FUNCTIONS**

[Docket No. R-78-552]

**PART 390—GUARANTY OF  
MORTGAGE-BACKED SECURITIES**

**Amendments to Increase Net Worth  
Requirements in the Mortgage-  
Backed Securities Program**

**AGENCY:** Government National  
Mortgage Association, HUD.

**ACTION:** Final Rule.

**SUMMARY:** The amendments provide for increases in minimum net worth required of mortgage lenders which are issuers of GNMA Guaranteed Mortgage-Backed Securities. The change is intended to raise minimum net worth of such issuers in amounts commensurate with the amounts of securities they have outstanding.

**EFFECTIVE DATE:** January 29, 1979.

**FOR FURTHER INFORMATION  
CONTACT:**

Paul Yates, Government National  
Mortgage Association, 451 Seventh  
Street, S.W., Room 6224, Washing-  
ton, D.C. 20410, Telephone Number:  
(202) 755-5550.

**SUPPLEMENTARY INFORMATION:**  
In the *FEDERAL REGISTER* of June 23, 1978, beginning on page 27486 there was published a notice of proposed rulemaking which provided for increases in the amounts of net worth that issuers of Government National Mortgage Association guaranteed securities are required to have. All interested persons were given until July 24, 1978, to submit written comments, suggestions, or objections regarding the proposed regulations.

The following responses are provided to the comments received: Three commentators indicated that the proposed net worth requirement for issuers of project mortgage securities (§ 390.3(c)(4)(ii)) is unduly burdensome for small firms. One of these commentators expressed the belief that the requirements will adversely affect the Mortgage-Backed Securities Program by reducing competition in the issuance of project securities. GNMA has conducted an extensive analysis of the present financial status of issuers of project mortgage securities. This anal-

One commentator expressed a belief that the term "assets acceptable to GNMA" as used in § 390.3(c) should be more fully defined. GNMA agrees that its requirements for acceptable assets should be made generally known. Therefore, details of GNMA's requirements with respect to acceptable assets have been distributed to all issuers, with a request for their views and suggestions. GNMA's requirements based on the resulting comments will be published shortly in the program handbook, which is The Mortgage-Backed Securities Guide (Handbook GNMA 5500.1).

One commentator noted an apparent ambiguity that could lead to a conclusion that the new net worth requirements are in addition to those presently applicable. This is not the intent; rather the new requirements are a substitute for the present requirements. Because only one commentator considered the proposed wording unclear, and because a careful review of the wording indicated it to state the intended meaning clearly, no revision has been made.

One commentator indicated a belief that the new requirements should only be applicable in connection with commitments that are issued on and after April 1, 1979. As proposed, the new requirements would be applicable for all active securities issuers wishing to issue securities on and after April 1, 1979. The same commentator suggested as another approach that the new net worth requirements be made applicable with respect to commitments made after these regulations are published in final form. Another commentator proposed that the requirements not become applicable until at least one year after the date of final publication of the regulations. GNMA recognizes that there have been delays in placing the new requirements into effect, and that possibly not enough time now exists for issuers where necessary to increase their capital by April 1, 1979. Therefore, the applicable date of the new net worth requirements has been revised to October 1, 1979. Consequently, any lender wishing to issue securities on or after October 1, 1979, must satisfy the new requirements, which are computed based on securities outstanding at the time of the issuance. Also, wording has been added to make clear that, with

respect to the income from which is exempt from Federal income taxes could be interpreted in such a way as to prohibit tax exempt entities from investing in GNMA guaranteed securities. The indicated provision has been deleted entirely from the final rule.

One commentator indicated a belief that the higher net worth requirements represent a unilateral amendment to existing contracts between the issuer and GNMA. This is not a correct understanding of the proposal. If an issuer issues no new securities, the prior requirements, as provided for in guaranty agreements between the issuer and GNMA, continue to be applicable.

One commentator noted that the definition of "securities outstanding" in § 390.3(d)(1) would result in a double counting of commitments to issue project securities where commitments also have been issued for construction loan securities on the same project. This result was not intended, and revisions have been made to the final regulations to make the computational procedure clear.

Two commentators stated that GNMA has not demonstrated through an analysis of the risks of loss to issuers and to GNMA that there is a need for an increase in the net worth of issuers of project securities. GNMA has, in fact, analyzed the implications of being a securities issuer and has related these implications to the need for net worth. The principal need for working capital arises for an issuer when a pooled mortgage is delinquent, and if it goes into foreclosure. During the time a loan is delinquent, the issuer must continue making payments to security holders, using its own resources, until the delinquency is cured or an insurance claim payment is received. Close analysis shows that the cash requirements for such advances can amount to five or more times the required amount of net worth, even under the new levels. If a loan is foreclosed, the issuer is responsible for covering, out of its own resources, a portion of the losses not covered by the FHA claim settlement. Such losses can approach an amount equal to issuers' net worth, even with the new levels, in some circumstances. Furthermore, GNMA wishes issuers, where appropriate, to provide forbear-

their responsibilities in the Mortgage-Backed Securities Program.

A new provision has been included in § 390.3(e)(2) to provide that to be an eligible issuer a lender must be in compliance with Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967.

In addition to the above changes made to the amendment as proposed, the following changes are made to the GNMA Mortgage-Backed Securities Program regulations:

Paragraph (a) of § 390.3 prescribes the basic requirements which a mortgage lender must meet in order to qualify as an "eligible issuer" of mortgage-backed securities guaranteed by GNMA. In order to so qualify, a mortgage lender must—

1. Be in good standing as a mortgagee approved by the FHA;
2. Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities as determined by GNMA;
3. Be in good standing as a FNMA or GNMA approved mortgage servicer;
4. Maintain the applicable minimum net worth prescribed by paragraph (c) of revised § 390.3; and
5. Meet the requirements, conditions, and limitations prescribed by GNMA in § 390.3 or in the Mortgage-Backed Securities Guide (GNMA 5500.1).

Paragraph (b) of § 390.3 makes it clear that GNMA will not make a commitment to guarantee mortgage-backed securities, or guarantee any securities, if the mortgage lender requesting the commitment or guaranty does not then qualify as an eligible issuer. This is an expansion of language presently found in § 390.3(a), which provides the GNMA will not guarantee any securities unless the issuer meets the prescribed net worth requirements.

Paragraph (c) of § 390.3 contains the revised net worth requirements for issuers of the various categories of mortgage-backed securities. The present provision deals with four such categories: Straight pass-through securities, modified pass-through securities backed by mortgages on the one- to four-family residences, modified pass-through securities backed by mobile home mortgages, and other modified pass-through securities. The new paragraph (c) replaces the category of

applications for straight pass-through securities will be accepted.

The net worth requirement for issuance of modified pass-through securities backed by home mortgages (paragraph (c)(2)) is increased with respect to securities issued on or after October 1, 1979. The present provision has a limit of \$250,000 on the net worth requirement. The new provision has no such limit, and it has a minimum requirement of \$100,000. For issuers with more than \$20 million of securities outstanding, the new requirement is \$250,000, plus 0.2 percent of securities outstanding in excess of \$20 million.

The net worth requirement for issuance of modified mobile home pass-through securities on or after October 1, 1979, is increased for large-volume issuers (paragraph (c)(3)). There is presently a \$500,000 net worth requirement for all issuers of this type of security. The new requirement is \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million (as adjusted based on the rule, described below, for internal reserve pools).

The net worth requirement for issuance of modified multifamily project pass-through securities on or after October 1, 1979, is similarly increased for large-volume issuers (paragraph (c)(4)). Under the present regulations, the \$500,000 limit for issuance of "other" securities is applicable to this category. The same formula is retained for multifamily project securities issued prior to October 1, 1979. For securities issued on or after that date, there is no \$500,000 limit, and an issuer with securities outstanding in excess of \$35 million needs a net worth of \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million.

The net worth requirement for issuance of more than one type of security on or after October 1, 1979 (paragraph (c)(5)) is \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million.

Paragraph (d) provides that, in calculating required net worth, any securities outstanding that are based on internal reserve pools will be reduced by one-half in the making of such calculations. It also provides that the term "securities outstanding" means the sum of the unpaid principal balances outstanding, plus commitments out-

mortgage banking practices, ethics, and standards, as determined by GNMA.

Paragraph (g) permits GNMA to withhold the issuance of further commitments to issuers that fail to meet GNMA issuer eligibility requirements.

Section 390.5, governing issuance of mortgage-backed securities, is amended by deleting the provision now contained in paragraph (e) of that section. This provision now requires the issuer to report to GNMA certain information as to the cost of acquisition of pooled mortgages. The amendment eliminates such reports and the need for Form HUD 1713.

Section 390.7, setting forth the requirements for mortgages that may be included in pools backing GNMA-guaranteed securities, is amended by revising paragraph (b). The present language excludes from a pool mortgages which have been insured or guaranteed longer than 12 months prior to the date of the GNMA commitment to guarantee the securities to be backed by such pool. The new language measures the age of the mortgages by the first scheduled monthly payment of principal and interest or the date of purchase at a GNMA-approved auction. This amendment, first, eliminates the need for the date of FHA insurance of VA or FmHA guaranty to be reported on Form HUD 1706 and, second, permits Government-held mortgages over a year old to be put in mortgage-backed securities pools if purchased by the issuer at a GNMA-approved auction.

Section 390.11, which now requires either maintenance of "excess collateral" or the furnishing of a fidelity bond by issuers of mortgage-backed securities, is amended by deleting the "excess collateral" option. Under the revised language, all issuers are required to maintain fidelity bond coverage acceptable to GNMA.

Finally, § 390.13, governing GNMA guarantees of mortgage-backed securities, is amended by revising the last sentence of the section to delete the present provision for GNMA to make claim against an issuer's "excess collateral" in the event of default.

A finding of inapplicability of § 102(2)(c) of the National Environmental Policy Act of 1969 has been



# AMENDMENTS TO GNMA MBS REGULATIONS

1. Section 390.3 is amended by revising it to read as follows:

## § 390.3 Eligible issuers of securities.

(a) A mortgage lender, including an instrumentality of a State or local government, shall be eligible to issue and service mortgage-backed securities guaranteed by the Association if such mortgage lender qualifies as an eligible issuer. In order to qualify as an eligible issuer, a mortgage lender must—

(1) Be in good standing as a mortgagee approved by the Federal Housing Administration;

(2) Be in good standing as a mortgage servicer approved by the Federal National Mortgage Association (FNMA) or the Association;

(3) Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth prescribed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this section or in the Association's Mortgage-Backed Securities Guide (GNMA 5500.1).

(b) The Association shall not make a commitment to guarantee, or guarantee (pursuant to a commitment or otherwise) any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty then qualifies as an eligible issuer.

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to GNMA of not less than the applicable minimum amount set forth in this paragraph, as follows:

(1) For the issuance of straight pass-through securities, \$100,000;

(2) For the issuance of modified pass-through securities based on and backed by mortgages on one-to-four family residences—

(i) With respect to securities issued or to be issued prior to October 1, 1979, an amount equal to the lesser of:

(a) \$250,000; or

(b) \$100,000, plus 1 percent of securities outstanding in excess of \$5 million.

(ii) With respect to securities issued or to be issued on or after October 1,

(i) With respect to securities issued or to be issued prior to October 1, 1979, \$500,000.

(ii) With respect to securities issued or to be issued on or after October 1, 1979, an amount equal to the sum of:

(a) \$500,000; plus

(b) 0.2 percent of securities outstanding in excess of \$35 million;

(4) For the issuance of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and permanent mortgages)—

(i) With respect to securities for which the first issue within any pool or project is issued or to be issued prior to October 1, 1979, an amount equal to the lesser of:

(a) \$500,000; or

(b) The sum of 3 percent of the first \$5 million of securities outstanding, plus 2 percent of the next \$5 million of securities outstanding, plus 1 percent of securities outstanding in excess of \$10 million, but in no event shall such net worth be less than \$100,000.

(ii) With respect to securities for which the first issue within any pool or project is issued or to be issued on or after October 1, 1979, an amount equal to the sum of:

(a) \$500,000; plus

(b) 0.2 percent of securities outstanding in excess of \$35 million;

(5) For the issuance of more than one type of security on or after October 1, 1979, an amount equal to the sum of:

(a) \$500,000; plus

(b) 0.2 percent of all mortgage-backed securities outstanding in excess of \$35 million.

(d)(1) In computing the required amount of net worth for purposes of this section, the term "securities outstanding" means the sum of:

(i) The unpaid principal balances of securities currently in the name of the issuer; plus

(ii) The amount of any outstanding commitments for guaranty issued by the Association, excluding the amount of project security commitments outstanding in cases where there are any construction security commitments outstanding for the same project; plus

(iii) The amount of any commitments to guaranty currently being requested from the Association, excluding the amount of project security commitments requested in cases where

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; or Title VII of the Civil Rights Act of 1968; or issued by the FHA or VA.

(f) A mortgage lender shall qualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and shall maintain its books and records in accordance with generally accepted accounting principles.

(g) In the event that a mortgage lender which has qualified as an eligible issuer should subsequently fail to comply with any of the requirements prescribed in this section, the Association may withhold further commitments to guarantee securities until such time as the Association is satisfied that the mortgage lender has resumed business operations in compliance with such requirements.

(h) If any issuer, subsequent to the issuance of securities guaranteed by the Association, should fail in a material way to be in compliance with any of the requirements prescribed in this section or of the guaranty agreement, the Association may bring proceedings to default such issuer, in accordance with the following procedure: The Association shall serve the issuer, by hand delivery or by certified or registered mail, with a written notice stating the facts incident to such failure and setting forth such affirmative requirements as the Association may consider necessary to correct such failure to be in compliance. Steps to correct or otherwise remedy such failure shall be carried out in accordance with such procedures as may be set forth in the guaranty agreement.

## § 390.5 [Amended]

2. Section 390.5 is amended by deleting therefrom existing paragraph (e).

3. Section 390.7 is amended by revising paragraph (b) thereof to read as follows:

An Association-approved auction, that is no more than 12 months prior to the date on which the Association makes its commitment to guarantee the issue of securities;

4. Section 390.11 is amended by revising it to read as follows:

## § 390.11 Fidelity bond coverage.

The issuer shall maintain, for the benefit of the Association, fidelity bond coverage, acceptable to the Association, that assures the faithful performance of the fiduciary responsibilities of the issuer.

5. Section 390.13 is amended by revising it to read as follows:

## § 390.13 Guaranty.

(a) With respect to straight pass-through securities, the Association guarantees the timely payment to the security holder of the proceeds of principal and interest, as collected, as undertaken in the Association's guaranty appearing on the face of the security. With respect to modified pass-through securities, the Association guarantees the timely payment, whether or not collected, of the fixed rate of interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. As to straight pass-through securities, any failure or inability of the issuer to make payment as due to the holders of the securities from the proceeds from the pool of mortgages which have been collected, or because of failure to make collections under reasonable and accepted standards of mortgage servicing, shall constitute a default of the issuer. As to modified pass-through securities, any failure or inability of the issuer to make fixed or other payments as due as well as such other failures as may be identified by the Association and included in the guaranty agreement, shall be deemed such a default.

(b) Upon any default by the issuer and payment under its guaranty by the Association, or any failure of the issuer to comply with the terms of the guaranty agreement, the Association may institute a claim against the issuer's fidelity bond, or may, pursuant to Section 306(g) of the National Housing Act, extinguish all the right, title, or other interest of the issuer in the

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 26, 1978.

JOHN H. DALTON,  
President, Government  
National Mortgage Association.  
[FR Doc. 78-36276 Filed 12-28-78; 8:45 am]

[4310-02-M]

## Title 25—Indians

## CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

### PART 231—COLORADO RIVER IRRIGATION PROJECT, ARIZONA

#### Final Revision of Rates and Procedures

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final Revision of Rates and Procedures.

SUMMARY: The purpose of the final revision is to increase the four power rate schedules (§ 231.51 Rate Schedule No. 1—Residential Rate, § 231.52 Rate Schedule No. 2—Commercial Rate, § 231.53 Rate Schedule No. 3—Irrigation Pumping Rate, and § 231.54 Rate Schedule No. 4—Street and Area Lighting), and to modify the procedure for adjusting power rates.

A rate increase is necessary because the Arizona Public Service Company, a power supplier of the Colorado River Irrigation Project, has increased the cost of wholesale power by 33.5 percent. The increased cost, when averaged with power purchased from the Department of Energy, will be 9 percent. A study has determined that the various classes of customers within the Project contribute revenue in proportion to the cost of serving them; therefore, an approximate 9 percent general increase is proposed to the existing rates. This increase is the minimum required to offset the additional cost of power purchased from Arizona

adjusting Project power rates is through the rulemaking process which is somewhat time consuming. The time delays associated with the rulemaking process have prevented the Project from adjusting its power rates in a timely manner, thus causing economic instability in the operation and maintenance of the power system. A provision (§ 231.55) has been added to Part 231 of the CFR which will provide for the Area Director to automatically adjust Project power rates through unilateral action in order to avoid delays associated with the rulemaking process. Rates adjustments due to increased costs of labor, materials and equipment will continue to be initiated through the rulemaking process.

DATE: These revisions shall become effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona 85011, telephone number 602-261-4184.

SUPPLEMENTARY INFORMATION: Beginning on Page 51806 of the November 7, 1978, FEDERAL REGISTER, Vol. 43, No. 216, there was published a proposed revision of rates and procedures. All interested persons were given until November 27, 1978, to submit comments regarding the proposed revision. No written comments were received; however, a public meeting was held in the Blake School Cafeteria, Parker, Arizona, November 21, 1978, to discuss the proposed rate increase and to answer any questions from concerned individuals. The comments from the public were generally complaints about the high cost of power and the financial impact this would have on their business. Questions asked related to the definition of demand charge and if these charges could be printed on the bills. All comments heard have been considered and it has been determined that the additional cost of purchased power can only be offset by increasing the rates as proposed. The principal author of this document is Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona 85011, telephone number 602-261-4184.

(Sec. 3.1, 10 BIAM; Section 2, 49 Stat. 1039; 54 Stat. 422; (5 U.S.C. 301).)

Accordingly, Title 25 CFR Part 231



through one meter to a customer at one premise either urban or rural, for domestic use only. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of Service.* Single phase, 60 cycle, 120/240 volts.

(c) *Monthly Rate.* (1) \$6.65 for the first 100 kilowatt-hours or less.

(2) 5.2 cents per kilowatt-hour for the next 300 kilowatt-hours.

(3) 4.4 cents per kilowatt-hour for the next 800 kilowatt-hours.

(4) 3.3 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest \$.0001) paid by the Project to the Project's power supplier.

2. Section 231.52 is revised to read as follows:

**§ 231.52 Rate Schedule No. 2—Commercial Rate.**

(a) *Application of Schedule.* This schedule applies to electrical service required by commercial, industrial and off-reservation irrigation pumping for all uses when such service is supplied at one point of delivery and measured through one meter. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle, at one standard voltage (120/240, 120/208, 270/480, or 480 volts).

(c) *Monthly Rate.* (1) \$6.65 for the first 100 kilowatt-hours or less.

(2) 5.1 cents per kilowatt-hour for the next 900 kilowatt-hours.

(3) 4.1 cents per kilowatt-hour for the next 4000 kilowatt-hours.

(4) 3.1 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Demand Charge.* (1) None for the first 5 kilowatts.

(2) \$2.77 per kilowatt for all billing demand over 5 kilowatts.

(e) *Minimum Charge.* (1) \$8.50 or \$2.77 per kilowatt of billing demand for billing demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the Officer in Charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve (12) times the highest monthly minimum computed for the same 12-month period.

(f) *Billing Demand.* The highest 15-minute integrated demand in kilowatts occurring during the month or the

demand specified in a contract, whichever is greater.

(g) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest \$.0001) paid by the Project to the Project's power suppliers.

3. Section 231.53 is revised to read as follows:

**§ 231.53 Rate Schedule No. 3—Irrigation Pumping Rate.**

(a) *Application of Schedule.* This schedule applies to electrical service required for pumping of irrigation water for irrigation systems located on the reservation, when such service is supplied at one point of delivery and consumption is measured through one meter and is approved by the Officer in Charge. Use must be limited to the customer's premises and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle at one standard voltage (120/240, 120/208, 270/480 or 480 volts).

(c) *Monthly Rate.* (1) Energy Charge 1.9 cents per kilowatt-hour.

(2) Demand Charge \$1.65 per kilowatt of billing demand.

(3) Minimum Charge \$1.65 per kilowatt of billing demand.

4. Section 231.54 is revised to read as follows:

**§ 231.54 Rate Schedule No. 4—Street and Area Lighting.**

(a) *Application of Schedule.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots and similar areas where dusk-to-dawn service is desired. The Project will own, operate and maintain the lighting system including normal lamp and globe replacement.

(b) *Monthly Rate.*

| Lamps                                                     | Per Lamp |           |
|-----------------------------------------------------------|----------|-----------|
|                                                           | Metered  | Unmetered |
| (1) 175 watts, mercury vapor (approx. 6,500 lumens).....  | \$5.55   | \$6.65    |
| (2) 250 watts, mercury vapor (approx. 10,000 lumens)..... | 7.00     | 8.50      |
| (3) 400 watts, mercury vapor (approx. 18,000 lumens)..... | 9.50     | 12.10     |

(c) *Minimum Term of Service.* The minimum term of service will be twelve months, payable in advance. This advance payment may be waived by the Officer in Charge.

(d) *Installation Charge.* The customer will be required to pay the total installation costs including labor and materials as determined by the Officer in Charge. Ownership of all facilities

will remain with the Project including lamp and globe replacement.

5. By adding § 231.55 to read as follows:

**§ 231.55 Adjustments due to Purchased Power Cost Changes.**

The rate schedules given in §§ 231.51, 231.52, 231.53 and 231.54 shall be adjusted as necessary and appropriate to offset changes in costs of power and energy purchased from the power supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the Area Director; however, when a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

**NOTE.**—It is hereby certified that the economic and inflationary impacts of this proposed action have been carefully evaluated in accordance with the Executive Order 11821.

HAROLD D. ROBERSON,  
Acting Assistant  
Area Director.

[FR Doc. 78-36278 Filed 12-28-78; 8:45 am]

[6570-06-M]

**Title 29—Labor**

**CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**PART 1613—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT**

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulation.

**SUMMARY:** The Equal Employment Opportunity Commission has adopted certain of the current regulations of the Civil Service Commission at 5 CFR Part 713 with respect to equal employment opportunity in the federal government and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. In addition, certain technical changes have been made in the regulations in order to reflect the transfer of authority with respect to federal EEO from the Civil Service Commission to the Equal Employment Opportunity Commission. The regulations have also been amended to conform to the 1978 amendments to the Age Discrimination in Employment Act (Pub. L. 95-256).

**EFFECTIVE DATE:** January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Barry Strejcek, Office of Field Services, Equal Employment Opportunity

Commission, 2401 E Street, NW., Washington, D.C. 20506, (tel.) 202-634-6855.

**SUPPLEMENTARY INFORMATION:** Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, all equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (b) and (c), will be transferred to the Equal Employment Opportunity Commission. Effective January 1, 1979, with respect to Federal employment of handicapped individuals, all enforcement and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, will also be transferred to the Equal Employment Opportunity Commission and all functions relating to the administration and enforcement of the Equal Pay and Age Discrimination in Employment Acts vested in the Civil Service Commission under the Fair Labor Standards Act, as amended, 29 U.S.C. 204 *et seq.*, the Portal-to-Portal Act of 1947 as amended, 29 U.S.C. 259 and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, will be transferred to the Equal Employment Opportunity Commission.

Accordingly, the EEOC has voted to continue in effect on January 1, 1979 and until further notice the following sections of the current regulations of the Civil Service Commission with respect to federal equal employment opportunity:

5 CFR 713.201 thru 713.235 (1978)  
5 CFR 713.241 thru 713.262 (1978)  
5 CFR 713.271 (as amended, November 14, 1978, at 43 FR 52694)  
5 CFR 713.281 thru 713.302 (1978)  
5 CFR 713.501 thru 713.643 (1978) (except as noted below)  
5 CFR 713.701 thru 713.710 (March 24, 1978, 43 FR 12293)

The above-cited regulations will be codified at 29 CFR 1613.201 *et seq.*, effective January 1, 1979. The numbering of the sections will be preserved. All references to the "Commission" will be to the Equal Employment Opportunity Commission. The "Office of Appeals and Review" is substituted for all present references to the "Appeals Review Board."

To reflect the transfer of function § 713.232 has been amended (new § 1613.232) as follows:

§ 1613.232 Where to appeal.

The complainant shall file his appeal in writing, either personally or by mail, with the Director, Office of Appeals and Review, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20056.

In addition, the EEOC has voted to continue in effect the substance of the following Federal Personnel Manual (FPM) Letters and Bulletins with respect to federal equal employment opportunity:

FPM Letter 713-19  
FPM Letter 713-21  
FPM Letter 713-30  
FPM Letter 713-40  
FPM Letter 713-32  
FPM Letter 713-36  
FPM Letter 713-38  
FPM Letter 713-42  
FPM Letter 713-44  
FPM Letter 551-9  
CSC Bulletin 713-50  
CSC Bulletin 713-43

These regulations and the FPM sections dealing with the complaint process will be applicable to the processing of all EEO Complaints except those raising an issue which is appealable to the Merit Systems Protection Board. Regulations relating to complaints involving both allegations of discrimination and issues appealable to the MSPB will be announced at a later date.

In addition, effective September 30, 1978, the Age Discrimination in Employment Act of 1967, as amended, was further amended to remove the upper age limit for protection for federal employees under the Act (the age limit had been age 70 for employees and age 65 for applicants).

Accordingly, in order to conform the regulations to the Age Discrimination in Employment Act Amendments of 1978 (Pub. L. 95-256), §§ 713.501(b)(4), 713.512, and 713.601(d) (new §§ 1613.501(b)(4), 1613.512, and 1613.601(d)) are revised as follow:

§ 1613.501 [Amended]

• • • • •  
(b) \* \* \* (4) This subpart applies to employees and applicants for employment who are at least 40 years of age.

§ 1613.512 Coverage.

The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with the agency who believes that he or she has been discriminated against on account of age and who, at the time of the action complained of, was an employee or applicant for employment at least 40 years of age. A complaint may also be filed by an organization for the person with his or her consent.

§ 1613.601 [Amended]

• • • • •  
(d) "Age" is an inclusive term which means the age of at least 40 years. Interested persons should also refer to the Notices section in today's Fed-

ERAL REGISTER for the offices and addresses at the Equal Employment Opportunity Commission designated to receive particular documents required by the regulations.

Signed this fifteenth day of December, 1978.

ELEANOR HOLMES NORTON,  
Chair, Equal Employment  
Opportunity Commission.

The U.S. Civil Service Commission has no objection to the transfer of authority reflected herein.

ALAN K. CAMPBELL,  
Chairman.

[FR Doc. 78-36273 Filed 12-28-78; 8:45 am]

[7630-01-M]

**Title 36—Parks, Forests and Public Property**

**CHAPTER IX — PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION**

**PART 905—STANDARDS OF CONDUCT**

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final Rule.

**SUMMARY:** On October 19, 1978, the Pennsylvania Avenue Development Corporation published at 43 FR 48633 an interim rule establishing Standards of Conduct governing the conduct of its employees and special government employees. Interested parties were given an opportunity to comment on the rule and to submit their comments by November 7, 1978. The interim rule was approved by the Board of Directors of the Corporation at its meeting of September 20, 1978. No written comments were received on the interim rule. An oral comment was received.

After reviewing the interim rule as published, several editorial changes have been made in this final rule. These changes include the capitalization of certain letters, correction of misspellings, and correction of the Corporation's mailing address by the addition of its suite number.

A single substantive change has been made in the text as a result of the comment received. The definition of "employee," appearing in § 905.735-103(f), has been modified to reflect that a determination must be made as to whether certain Board Members are officers of employees or other governmental entities. If a Board Member is considered an officer or an employee by that entity, then the Member will be treated as such by the Corporation under this Part.



DATE: Effective date of final rule: December 18, 1978.

**FOR FURTHER INFORMATION CONTACT:**

David W. Briggs, Attorney, Office of the General Counsel [(202) 566-1078], Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C., 20004.

Dated: December 19, 1978.

JOSEPH B. DANZANSKY,  
Chairman.

Accordingly, 36 CFR is amended by adding Part 905 to read as follows:

**PART 905—STANDARDS OF CONDUCT**

**Subpart A—General Provisions**

Sec.

- 905.735-101 Principles and purpose.
- 905.735-102 Adoption of regulations.
- 905.735-103 Definitions.
- 905.735-104 Applicability.
- 905.735-105 Designation of counselor.
- 905.735-106 Notification to employees and special Government employees.
- 905.735-107 Review of statements of employment and financial interests.
- 905.735-108 Remedial and disciplinary action.

**Subpart B—Conduct and Responsibilities of Employees**

- 905.735-201 General standards of conduct.
- 905.735-202 Gifts, entertainment, and favors.
- 905.735-203 Outside employment and other activity.
- 905.735-204 Disclosure of information.
- 905.735-205 Purchase of Government-owned property.

**Subpart C—Conduct and Responsibilities of Special Government Employees**

- 905.735-301 General standards of conduct.

**Subpart D—Special Standards Applicable to Certain Board Members**

- 905.735-401 Standards.
- 905.735-402 Advice and determination.

**Subpart E—Statements of Employment and Financial Interests**

- 905.735-501 Form and content of statements.
- 905.735-502 Statements of employment and financial interests by employees.
- 905.735-503 Statements of employment and financial interests by special Government employees.
- 905.735-504 Procedures for obtaining statements.
- 905.735-505 Confidentiality of statements.

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735; section 6(5), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875).

**Subpart A—General Provisions**

**§ 905.735-101 Principles and purpose.**

In order to assure that the business of the Pennsylvania Avenue Development Corporation is conducted effectively, objectively, and without improper influence or appearance thereof, all employees and special Government employees must observe unquestionable standards of integrity and conduct. Employees and special Government employees shall not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct or other conduct prejudicial to the Government. All employees and special Government employees must avoid conflicts of private interest with their public duties and responsibilities. They must consider the propriety of any action in relation to general ethical standards of the highest order, so that public confidence in the integrity of the Government will not be impaired. Certain standards are set by law. Others are set by regulation and by policy. This part incorporates by reference applicable general standards of conduct and prescribes additional necessary elements. Taken together, this part constitutes the Corporation's regulations on this subject. Failure to observe any of the regulations in this part is cause for remedial action.

**§ 905.735-102 Adoption of regulations.**

Under the authority of 5 CFR 735.104(f), the Corporation adopts the following sections of the Civil Service Commission regulations on "Employee Responsibilities and Conduct" found in Part 735 of Title 5, Code of Federal Regulations: § 735.202(a), (d), (e), (f) through 735.210; 735.302; 735.303(a); 735.304; 735.305(a); 735.306; 735.404 through 735.411; and, 735.412(b) and (d). These sections are incorporated by reference in this part and are modified and supplemented as set forth herein.

**§ 905.735-103 Definitions.**

As used in this part:

- (a) "Board Member" means any member of the Board of Directors of the Pennsylvania Avenue Development Corporation, appointed or serving under section 3, Pub. L. 92-578, 86 Stat. 1267 (40 U.S.C. 872).
- (b) "Chairman" means the Chairman of the Board of Directors and President of the Corporation.
- (c) "Conflict" means the subordination of public responsibilities to private interests, and includes the appearance of such subordination.
- (d) "Consultant" means an individual who serves as an advisor to an officer or division of the Corporation, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or

questions presented him by the Corporation, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may lie in his possession of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency. (Chapter 304, Federal Personnel Manual).

(e) "Corporation" means the Pennsylvania Avenue Development Corporation, created by the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871).

(f) "Employee" means an officer or employee of the Corporation, but does not include a special Government employee as defined herein. The term includes those Board Members who are determined to be officers or employees of the executive or legislative branches of the United States or of the District of Columbia. The term does not include elected officials.

(g) "Executive Order" means Executive Order 11222 of May 8, 1965.

(h) "Expert" means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent individuals in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. (Chapter 304, Federal Personnel Manual.)

(i) "Head of the agency" means the Chairman.

(j) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other institution or organization.

(k) "Special Government Employee" means an officer or employee of the Corporation who is retained, designated, appointed or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202(a)). The term includes those Board Members who are appointed from private life and required to file a statement of financial interests with the Chairman of the Civil Service Commission pursuant to Part IV of the Executive Order, or who are determined to be special government employees of the executive or

legislative branches of the United States or the District of Columbia.

**§ 905.735-104 Applicability.**

This part applies to each employee and to each special Government employee of the Corporation as defined herein and supplements the Executive Order and Part 735 of Title 5, Code of Federal Regulations, promulgated by the Civil Service Commission on employee responsibilities and conduct.

**§ 905.735-105 Designation of counselor.**

In accordance with 5 CFR 735.105(a), the General Counsel of the Corporation is designated to be Ethics Counselor and shall serve as the Corporation's liaison with the Civil Service Commission for matters covered in this part.

**§ 905.735-106 Notification to employees and special Government employees.**

(a) At the time these regulations are published, or amended, and not less often than once annually thereafter, the Corporation shall furnish each employee and special Government employees with a copy of the regulations. The Administrative Officer shall insure that each newly hired employee and special Government employee is given a copy of these regulations prior to or at the time of entry on duty.

(b) All employees and special Government employees will be advised by the Corporation of the availability of counseling regarding the provisions of this part.

**§ 905.735-107 Review of statements of employment and financial interests.**

The Ethics Counselor of the Corporation shall review each statement of employment and financial interests submitted under §§ 905.735-402 or 905.735-403, except his own and those statements of special Government employees who file with the Chairman of the Civil Service Commission. When review discloses a conflict between the interests of an employee or special Government employee of the Corporation and the performance of his services for the Corporation, the Ethics Counselor shall bring the conflict to the attention of the employee or special Government employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict cannot be resolved, the Ethics Counselor shall forward a written report on the conflict to the Chairman, recommending appropriate action. The Chairman shall review the report, solicit an explanation from the individual, and seek resolution of the conflict.

**§ 905.735-108 Remedial and disciplinary action.**

(a) In addition to any penalties prescribed by law, the Chairman, after review and consideration of any explanation given by an employee or special Government employee concerning a conflict of interest, may institute appropriate remedial action to resolve or otherwise eliminate the conflict. Appropriate remedial action may include, but is not limited to:

- (1) Divestment by the employee or the special Government employee of the conflicting interest;
  - (2) Disqualification of the individual from a particular assignment;
  - (3) Changes in the assigned duties of the individual; or
  - (4) Disciplinary action.
- (b) Where the situation warrants some form of disciplinary action, the Chairman may choose from a wide range including a warning or reprimand, suspension, reduction in grade or pay, or termination of employment. The disciplinary action selected should reflect the character and degree of the offense which demands such action and should be reasonable in light of that offense.
- (c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive Orders, and regulations.

**Subpart B—Conduct and Responsibilities of Employees**

**§ 905.735-201 General standards of conduct.**

- (a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Corporation. Courtesy, consideration, and promptness are to be observed in dealing with the public, Congress, and other governmental agencies.
- (b) All employees shall conduct themselves off the job so as not to reflect adversely upon the Corporation or the Federal service.
- (c) Employee conduct shall exemplify the highest standards of integrity. Employees shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:
  - (1) Using public office for private gain;
  - (2) Giving preferential treatment to any person;
  - (3) Impeding Government efficiency or economy;
  - (4) Losing complete independence or impartiality;
  - (5) Making a Government decision outside official channels; or
  - (6) Affecting adversely the confidence of the public in the integrity of the Government.

**§ 905.735-202 Gifts, entertainment, and favors.**

Pursuant to paragraph (b) of 5 CFR 735.202, the following exceptions to the restriction of paragraph (a) of that section are authorized. Employees may:

- (a) Accept gifts and other things of value under circumstances which arise from an obvious family or personal relationship(s) (such as between the parents, children, or spouse of the employee and the employee), when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;
- (b) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting, or on an inspection tour where an employee may properly be in attendance;
- (c) Accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home purchase;
- (d) Accept unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value;
- (e) Participating without payment in privately funded activities in the Washington metropolitan area if: (1) An invitation is addressed to the Chairman or Executive Director of the Corporation and approved by either of them; (2) no provision for individual payment is readily available; and (3) the activities are limited to ceremonies of interest to both the local community and the Corporation (such as ground breakings or openings), or are sponsored or encouraged by the Federal or District Government as a matter of policy; and,
- (f) Participate in widely attended lunches, dinners, and similar gatherings sponsored by industrial, commercial, technical and professional associations, or groups, for discussion of matters of interest both to the Corporation and the public. Participation by an employee at the host's expense is appropriate if the host is an association or group and not an individual.

**§ 905.735-203 Outside employment and other activity.**

As provided in 5 CFR 735.203, an employee of the Corporation may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who proposes to engage in outside employment shall report that fact in writing to his supervisor prior to undertaking such employment.



**§ 905.735-204 Disclosure of information.**

(a) Every employee who is involved in the development, maintenance or use of Corporation records containing information about individuals shall familiarize himself with the requirements and penalties of the Privacy Act of 1974 (5 U.S.C. 552a) and Corporation regulations (36 CFR Part 903) promulgated thereunder concerning the utilization of and access to such records.

(b) Every employee is directed to cooperate to the fullest extent possible in discharging the requirement of the Freedom of Information Act (5 U.S.C. 522) and Corporation regulations promulgated thereunder (36 CFR Part 902). Every effort should be made to furnish service with reasonable promptness to persons who seek access to Corporation records and information.

**§ 905.735-205 Purchase of Government-owned property.**

Employees of the Corporation and members of their immediate families may purchase Government-owned personal property when it is offered for sale by the General Services Administration or any Federal agency other than the Corporation (41 CFR 101-45.302).

**Subpart C—Conduct and Responsibilities of Special Government Employees****§ 905.735-301 General standards of conduct.**

(a) Special Government employees of the Corporation shall adhere to applicable regulations adopted under § 904.735-102, except 5 CFR 735.203(b). In addition, the standards of conduct set forth in §§ 905.735-201, 204, and 205 shall apply to special Government employees.

(b) Special Government employees of the Corporation may teach, lecture, or write consistent with the provisions of 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the provisions concerning gifts, entertainment, and favors set forth in § 905.735-202 are hereby made applicable to special Government employees.

**Subpart D—Special Standards Applicable to Certain Board Members****§ 905.735-401 Standards.**

Section 3(c)(8) of the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1287 (40 U.S.C. 872(c)(8)) specifies that the eight members appointed to the Board by the President from private life, at least four of whom shall be residents of the District of Columbia, "shall have knowledge and experience in one

or more fields of history, architecture, city planning, retailing, real estate, construction or government." As a result of these prerequisites for appointment of a private member to the Board of Directors, conflicts could arise for these Board Members as the Corporation proceeds with various development activities. Accordingly, Board Members should perform their responsibilities for the operation and management of the Corporation consistent with these regulations, and other applicable Federal laws and regulations, and consistent with the highest level of fiduciary responsibility.

**§ 905.735-402 Advice and determination.**

The Corporation's Ethics Counselor is readily available for consultation when a Board Member seeks advice as to the appropriateness of his actions in light of this part, the Executive Order, or Title 18, United States Code, Chapter 11. A Board Member has an affirmative duty to advise the Ethics Counselor of any potential conflict of interest which may arise with the individual's participation in any particular matter before the Corporation. If advised to do so, the Board Member should submit to the Chairman for determination the question of whether or not the conflict will disqualify the Board Member from participating in the action to be taken by the Corporation. Under the authority delegated to the Chairman pursuant to 18 U.S.C. 208(b), the Chairman may find that the Board Member need not be disqualified from participating in the particular matter, if: (a) The Board Member makes a full disclosure of the financial interest; and (b) the Chairman furnishes him with a written determination in advance of the action that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the Board Member. Requests for similar determinations for conflicts posed by the financial interests of the Chairman himself shall be submitted to the Chairman of the Civil Service Commission.

**Subpart E—Statements of Employment and Financial Interests****§ 905.735-501 Form and content of statements.**

Statements of employment and financial interests required to be submitted under this subpart by employees and special Government employees shall contain the information required in the formats prescribed by the Civil Service Commission in the Federal Personnel Manual.

**§ 905.735-502 Statements of employment and financial interests by employees.**

(a) Employees of the Corporation in the following named positions shall prepare and submit statements of employment and financial interests:

- (1) Executive Director;
- (2) Assistant Director Legal—General Counsel;
- (3) Assistant Director/Finance;
- (4) Development Director;
- (5) Secretary of the Corporation Administrative Officer;
- (6) Construction Manager;
- (7) Senior Architect/Planner;
- (8) Chief, Real Estate Operations;
- (9) Any Contracting Officer of the Corporation; and
- (10) Any employee classified as a GS-13 or above whose duties and responsibilities are such that the ethics counselor determines a statement should be filed.

(b) Each statement of employment and financial interests required by this section, except that of the General Counsel, shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street NW., Suite 1148, Washington, D.C. 20004. The General Counsel, as Ethics Counselor, shall submit his statement directly to the Chairman for review.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of this determination upon a written request to the Chairman.

**§ 905.735-503 Statements of employment and financial interests by special Government employees.**

All special Government employees shall submit a statement of employment and financial interest prior to beginning employment or service with the Corporation. Each statement shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street, NW., Suite 1148, Washington, D.C. 20004, except that the statements of Board Members appointed from private life shall be filed with the U.S. Civil Service Commission.

**§ 905.735-504 Procedures for obtaining statements.**

(a) Upon the adopting of the regulations of this part, the Ethics Counselor shall deliver to the incumbent of each position named in § 905.735-402 and to each special Government employee, two copies of the appropriate form for filing a statement of employment and financial interests. An enclosure with the forms shall advise that:

(1) The original of the completed form must be returned in a sealed envelope, marked "Personal—In Confidence," to the Ethics Counselor within the time specified by the Ethics Counselor;

(2) The services of the ethics counselor are available to advise and assist in preparation of the statement;

(3) Any additions or deletions to the information furnished must be reported in a supplementary statement at the end of the calendar quarter in which the change occurs; or in the case of a special Government employee, at the time the change occurs; and

(4) No later than June 30 of each year, all special Government employees and employees required to file under § 905.735-402(a) shall file an annual supplementary statement to update the information previously filed.

(b) The Administrative Officer shall be responsible for assuring that a completed statement of employment and financial interests is obtained from each special Government employee prior to the beginning of employment or service with the Corporation. The Administrative Officer shall promptly forward the statements to the Ethics Counselor for review.

**§ 905.735-505 Confidentiality of statements.**

The Ethics Counselor shall hold in confidence each statement of employment and financial interests, and each

supplementary statement within his control. Access to or disclosure of information contained in these statements shall not be allowed, except as the Commission or the Ethics Counselor determine for good cause shown, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), and the regulations and pertinent notices of systems of records prepared by the Civil Service Commission and the Corporation in accordance with that Act.

[FR Doc. 78-36338 Filed 12-28-78; 8:45 am]

[7710-12-M]

**Title 39—Postal Service****CHAPTER I—UNITED STATES POSTAL SERVICE****SUBCHAPTER B—INTERNATIONAL MAIL****PART 10—INTERNATIONAL EXPRESS MAIL RATES****Rates**

AGENCY: Postal Service.

ACTION: Final International Express Mail Rates.

SUMMARY: The Postal Service is beginning International Express Mail Service with the Republic of China (Taiwan), Singapore, and the Federal Republic of Germany (West Germany) at rates indicated in the tables below. Rates to the Federal Republic of Ger-

many are the same as those charged to other European countries. Rates for the Republic of China (Taiwan) and Singapore are new.

EFFECTIVE DATE: The International Express Mail Service rates for the Republic of China (Taiwan) are effective December 27, 1978. The International Express Mail Service rates for Singapore and the Federal Republic of Germany (West Germany) are effective January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Patricia M. Gibert, (202) 245-5624.

SUPPLEMENTARY INFORMATION: On December 5, 1978, the Postal Service published for comment in the Federal Register proposed rates of postage for International Express Mail. 43 FR 56959. Interested persons were invited to submit written data, views, or arguments concerning these rates. However, no comments were received. Accordingly, the Postal Service adopts without change the rates of postage for International Express Mail set out in the following tables (designated Tables 8-3, 8-11, 8-12, 8-13, and 8-14) for inclusion in publication 42, International Mail, incorporated by reference, 39 CFR 10.1.

(39 U.S.C. 401, 403, 404(a)(2), 407, 410(a); Universal Postal Convention, Lausanne, 1974, T.I.A.S. No. 8231, Art. 6.)

W. ALLEN SANDERS,  
Assistant General Counsel.



[7710-12-C]

TABLE 8-3

BELGIUM, FEDERAL REPUBLIC OF GERMANY, FRANCE,  
NETHERLANDS, AND UNITED KINGDOM  
INTERNATIONAL EXPRESS MAIL  
CUSTOM DESIGNED SERVICE

| ZONE TO INTERNATIONAL EXCHANGE OFFICE |         |         |         |         |         |         |         |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|
| POUNDS<br>(up to<br>and<br>including) | 3       | 4       | 5       | 6       | 7       | 8       | 9       |
| 1                                     | \$27.85 | \$27.88 | \$27.92 | \$27.96 | \$28.00 | \$28.05 | \$28.10 |
| 2                                     | 29.92   | 29.98   | 30.06   | 30.14   | 30.22   | 30.32   | 30.42   |
| 3                                     | 31.99   | 32.08   | 32.20   | 32.32   | 32.44   | 32.59   | 32.74   |
| 4                                     | 34.06   | 34.18   | 34.34   | 34.50   | 34.66   | 34.86   | 35.06   |
| 5                                     | 36.13   | 36.28   | 36.48   | 36.68   | 36.88   | 37.13   | 37.38   |
| 6                                     | 38.20   | 38.38   | 38.62   | 38.86   | 39.10   | 39.40   | 39.70   |
| 7                                     | 40.27   | 40.48   | 40.76   | 41.04   | 41.32   | 41.67   | 42.02   |
| 8                                     | 42.34   | 42.58   | 42.90   | 43.22   | 43.54   | 43.94   | 44.34   |
| 9                                     | 44.41   | 44.68   | 45.04   | 45.40   | 45.78   | 46.21   | 46.66   |
| 10                                    | 46.48   | 46.78   | 47.18   | 47.58   | 47.98   | 48.48   | 48.98   |
| 11                                    | 48.55   | 48.88   | 49.32   | 49.76   | 50.20   | 50.75   | 51.30   |
| 12                                    | 50.62   | 50.98   | 51.46   | 51.94   | 52.42   | 53.02   | 53.62   |
| 13                                    | 52.69   | 53.08   | 53.60   | 54.12   | 54.64   | 55.29   | 55.94   |
| 14                                    | 54.78   | 55.18   | 55.74   | 56.30   | 56.86   | 57.56   | 58.26   |
| 15                                    | 56.83   | 57.28   | 57.88   | 58.48   | 59.08   | 59.83   | 60.58   |
| 16                                    | 58.90   | 59.38   | 60.02   | 60.66   | 61.30   | 62.10   | 62.90   |
| 17                                    | 60.97   | 61.48   | 62.16   | 62.84   | 63.52   | 64.37   | 65.22   |
| 18                                    | 63.04   | 63.58   | 64.30   | 65.02   | 65.74   | 66.64   | 67.54   |
| 19                                    | 65.11   | 65.68   | 66.44   | 67.20   | 67.96   | 68.91   | 69.86   |
| 20                                    | 67.18   | 67.78   | 68.58   | 69.38   | 70.18   | 71.18   | 72.18   |
| 21                                    | 69.25   | 69.88   | 70.72   | 71.56   | 72.40   | 73.45   | 74.50   |
| 22                                    | 71.32   | 71.98   | 72.88   | 73.74   | 74.62   | 75.72   | 76.82   |
| 23                                    | 73.39   | 74.08   | 75.00   | 75.92   | 76.84   | 77.99   | 79.14   |
| 24                                    | 75.46   | 76.16   | 77.14   | 78.10   | 79.06   | 80.26   | 81.46   |
| 25                                    | 77.53   | 78.28   | 79.28   | 80.28   | 81.28   | 82.53   | 83.78   |
| 26                                    | 79.60   | 80.38   | 81.42   | 82.46   | 83.50   | 84.80   | 86.10   |
| 27                                    | 81.67   | 82.48   | 83.56   | 84.64   | 85.72   | 87.07   | 88.42   |
| 28                                    | 83.74   | 84.58   | 85.70   | 86.82   | 87.94   | 89.34   | 90.74   |
| 29                                    | 85.81   | 86.68   | 87.84   | 89.00   | 90.16   | 91.61   | 93.06   |
| 30                                    | 87.88   | 88.78   | 89.98   | 91.18   | 92.38   | 93.88   | 95.38   |
| 31                                    | 89.95   | 90.88   | 92.12   | 93.36   | 94.60   | 96.15   | 97.70   |
| 32                                    | 92.02   | 92.98   | 94.26   | 95.54   | 96.82   | 98.42   | 100.02  |
| 33                                    | 94.09   | 95.08   | 96.40   | 97.72   | 99.04   | 100.69  | 102.34  |

- NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
- 2) Pick-up is available under a Service Agreement for an added charge of \$5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
- 3) If tendered at origin airport mail facility, deduct \$3.00 from these rates.

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TABLE 8-11

REPUBLIC OF CHINA (TAIWAN)  
INTERNATIONAL EXPRESS MAIL  
CUSTOM DESIGNED SERVICE

| ZONE TO INTERNATIONAL EXCHANGE OFFICE |         |         |         |         |         |         |         |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|
| POUNDS<br>(up to<br>and<br>including) | 3       | 4       | 5       | 6       | 7       | 8       | 9       |
| 1                                     | \$26.31 | \$28.34 | \$28.38 | \$28.42 | \$28.46 | \$28.51 | \$28.56 |
| 2                                     | 30.84   | 30.90   | 30.98   | 31.06   | 31.14   | 31.24   | 31.34   |
| 3                                     | 33.37   | 33.46   | 33.58   | 33.70   | 33.82   | 33.97   | 34.12   |
| 4                                     | 35.90   | 36.02   | 36.18   | 36.34   | 36.50   | 36.70   | 36.90   |
| 5                                     | 38.43   | 38.58   | 38.78   | 38.98   | 39.18   | 39.43   | 39.68   |
| 6                                     | 40.96   | 41.14   | 41.38   | 41.62   | 41.86   | 42.16   | 42.46   |
| 7                                     | 43.49   | 43.70   | 43.98   | 44.26   | 44.54   | 44.89   | 45.24   |
| 8                                     | 46.02   | 46.26   | 46.58   | 46.90   | 47.22   | 47.62   | 48.02   |
| 9                                     | 48.55   | 48.82   | 49.18   | 49.54   | 49.90   | 50.35   | 50.80   |
| 10                                    | 51.08   | 51.38   | 51.78   | 52.18   | 52.58   | 53.08   | 53.58   |
| 11                                    | 53.61   | 53.94   | 54.38   | 54.82   | 55.26   | 55.81   | 56.36   |
| 12                                    | 56.14   | 56.50   | 56.98   | 57.46   | 57.94   | 58.54   | 59.14   |
| 13                                    | 58.67   | 59.06   | 59.58   | 60.10   | 60.62   | 61.27   | 61.92   |
| 14                                    | 61.20   | 61.62   | 62.18   | 62.74   | 63.30   | 64.00   | 64.70   |
| 15                                    | 63.73   | 64.18   | 64.78   | 65.38   | 65.98   | 66.73   | 67.48   |
| 16                                    | 66.26   | 66.74   | 67.38   | 68.02   | 68.66   | 69.46   | 70.26   |
| 17                                    | 68.79   | 69.30   | 69.98   | 70.66   | 71.34   | 72.19   | 73.04   |
| 18                                    | 71.32   | 71.86   | 72.58   | 73.30   | 74.02   | 74.92   | 75.82   |
| 19                                    | 73.85   | 74.42   | 75.18   | 75.94   | 76.70   | 77.65   | 78.60   |
| 20                                    | 76.38   | 76.98   | 77.78   | 78.58   | 79.38   | 80.38   | 81.38   |
| 21                                    | 78.91   | 79.54   | 80.38   | 81.22   | 82.06   | 83.11   | 84.16   |
| 22                                    | 81.44   | 82.10   | 82.98   | 83.86   | 84.74   | 85.84   | 86.94   |
| 23                                    | 83.97   | 84.66   | 85.56   | 86.50   | 87.42   | 88.57   | 89.72   |
| 24                                    | 86.50   | 87.22   | 88.18   | 89.14   | 90.10   | 91.30   | 92.50   |
| 25                                    | 89.03   | 89.78   | 90.78   | 91.78   | 92.78   | 94.03   | 95.28   |
| 26                                    | 91.56   | 92.34   | 93.38   | 94.42   | 95.46   | 96.76   | 98.06   |
| 27                                    | 94.09   | 94.90   | 95.98   | 97.06   | 98.14   | 99.49   | 100.84  |
| 28                                    | 96.62   | 97.46   | 98.58   | 99.70   | 100.82  | 102.22  | 103.62  |
| 29                                    | 99.15   | 100.02  | 101.18  | 102.34  | 103.50  | 104.95  | 106.40  |
| 30                                    | 101.68  | 102.58  | 103.78  | 104.98  | 106.18  | 107.68  | 109.18  |
| 31                                    | 104.21  | 105.14  | 106.38  | 107.62  | 108.86  | 110.41  | 111.96  |
| 32                                    | 106.74  | 107.70  | 108.98  | 110.26  | 111.54  | 113.14  | 114.74  |
| 33                                    | 109.27  | 110.28  | 111.58  | 112.90  | 114.22  | 115.87  | 117.52  |

- NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
- 2) Pick-up is available under a Service Agreement for an added charge of \$5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
- 3) If tendered at origin airport mail facility, deduct \$3.00 from these rates.

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TABLE 8-12

**REPUBLIC OF CHINA (TAIWAN)**  
**INTERNATIONAL EXPRESS MAIL**  
**ON DEMAND SERVICE**

| ZONE TO INTERNATIONAL EXCHANGE OFFICE |         |         |         |         |         |         |         |  |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|--|
| POUNDS<br>(up to<br>and<br>including) | 3       | 4       | 5       | 6       | 7       | 8       | 9       |  |
| 1                                     | \$18.03 | \$18.06 | \$18.10 | \$18.14 | \$18.18 | \$18.23 | \$18.28 |  |
| 2                                     | 20.56   | 20.62   | 20.70   | 20.78   | 20.86   | 20.96   | 21.06   |  |
| 3                                     | 23.09   | 23.18   | 23.30   | 23.42   | 23.54   | 23.69   | 23.84   |  |
| 4                                     | 25.62   | 25.74   | 25.90   | 26.06   | 26.22   | 26.42   | 26.62   |  |
| 5                                     | 28.15   | 28.30   | 28.50   | 28.70   | 28.90   | 29.15   | 29.40   |  |
| 6                                     | 30.68   | 30.86   | 31.10   | 31.34   | 31.58   | 31.88   | 32.18   |  |
| 7                                     | 33.21   | 33.42   | 33.70   | 33.98   | 34.26   | 34.61   | 34.96   |  |
| 8                                     | 35.74   | 35.98   | 36.30   | 36.62   | 36.94   | 37.34   | 37.74   |  |
| 9                                     | 38.27   | 38.54   | 38.90   | 39.26   | 39.62   | 40.07   | 40.52   |  |
| 10                                    | 40.80   | 41.10   | 41.50   | 41.90   | 42.30   | 42.80   | 43.30   |  |
| 11                                    | 43.33   | 43.66   | 44.10   | 44.54   | 44.98   | 45.53   | 46.08   |  |
| 12                                    | 45.86   | 46.22   | 46.70   | 47.18   | 47.66   | 48.26   | 48.86   |  |
| 13                                    | 48.39   | 48.78   | 49.30   | 49.82   | 50.34   | 50.99   | 51.64   |  |
| 14                                    | 50.92   | 51.34   | 51.90   | 52.46   | 53.02   | 53.72   | 54.42   |  |
| 15                                    | 53.45   | 53.90   | 54.50   | 55.10   | 55.70   | 56.45   | 57.20   |  |
| 16                                    | 55.98   | 56.46   | 57.10   | 57.74   | 58.38   | 59.18   | 59.98   |  |
| 17                                    | 58.51   | 59.02   | 59.70   | 60.38   | 61.06   | 61.91   | 62.76   |  |
| 18                                    | 61.04   | 61.58   | 62.30   | 63.02   | 63.74   | 64.64   | 65.54   |  |
| 19                                    | 63.57   | 64.14   | 64.90   | 65.68   | 66.42   | 67.37   | 68.32   |  |
| 20                                    | 66.10   | 66.70   | 67.50   | 68.30   | 69.10   | 70.10   | 71.10   |  |
| 21                                    | 68.63   | 69.26   | 70.10   | 70.94   | 71.78   | 72.83   | 73.88   |  |
| 22                                    | 71.16   | 71.82   | 72.70   | 73.58   | 74.46   | 75.56   | 76.66   |  |
| 23                                    | 73.69   | 74.38   | 75.30   | 76.22   | 77.14   | 78.29   | 79.44   |  |
| 24                                    | 76.22   | 76.94   | 77.90   | 78.86   | 79.82   | 81.02   | 82.22   |  |
| 25                                    | 78.75   | 79.50   | 80.50   | 81.50   | 82.50   | 83.75   | 85.00   |  |
| 26                                    | 81.28   | 82.06   | 83.10   | 84.14   | 85.18   | 86.48   | 87.78   |  |
| 27                                    | 83.81   | 84.62   | 85.70   | 86.78   | 87.86   | 89.21   | 90.56   |  |
| 28                                    | 86.34   | 87.18   | 88.30   | 89.42   | 90.54   | 91.94   | 93.34   |  |
| 29                                    | 88.87   | 89.74   | 90.90   | 92.08   | 93.22   | 94.67   | 96.12   |  |
| 30                                    | 91.40   | 92.30   | 93.50   | 94.70   | 95.90   | 97.40   | 98.90   |  |
| 31                                    | 93.93   | 94.86   | 95.10   | 97.34   | 98.58   | 100.13  | 101.68  |  |
| 32                                    | 96.46   | 97.42   | 98.70   | 99.98   | 101.26  | 102.86  | 104.46  |  |
| 33                                    | 98.99   | 99.98   | 101.30  | 102.62  | 103.94  | 105.59  | 107.24  |  |

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of \$5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

**SINGAPORE**  
**INTERNATIONAL EXPRESS MAIL**  
**CUSTOM DESIGNED SERVICE**

| ZONE TO INTERNATIONAL EXCHANGE OFFICE |         |         |         |         |         |         |         |  |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|--|
| POUNDS<br>(up to<br>and<br>including) | 3       | 4       | 5       | 6       | 7       | 8       | 9       |  |
| 1                                     | \$30.33 | \$30.36 | \$30.40 | \$30.44 | \$30.48 | \$30.53 | \$30.58 |  |
| 2                                     | 34.88   | 34.94   | 35.02   | 35.10   | 35.18   | 35.28   | 35.38   |  |
| 3                                     | 38.43   | 39.52   | 39.64   | 39.76   | 39.88   | 40.03   | 40.18   |  |
| 4                                     | 43.98   | 44.10   | 44.26   | 44.42   | 44.58   | 44.78   | 44.98   |  |
| 5                                     | 48.53   | 48.68   | 48.88   | 49.08   | 49.28   | 49.53   | 49.78   |  |
| 6                                     | 53.08   | 53.26   | 53.50   | 53.74   | 53.98   | 54.28   | 54.58   |  |
| 7                                     | 57.63   | 57.84   | 58.12   | 58.40   | 58.68   | 59.03   | 59.38   |  |
| 8                                     | 62.18   | 62.42   | 62.74   | 63.06   | 63.38   | 63.78   | 64.18   |  |
| 9                                     | 66.73   | 67.00   | 67.36   | 67.72   | 68.08   | 68.53   | 68.98   |  |
| 10                                    | 71.28   | 71.58   | 71.98   | 72.38   | 72.78   | 73.28   | 73.78   |  |
| 11                                    | 75.83   | 76.16   | 76.60   | 77.04   | 77.48   | 78.03   | 78.58   |  |
| 12                                    | 80.38   | 80.74   | 81.22   | 81.70   | 82.18   | 82.78   | 83.38   |  |
| 13                                    | 84.93   | 85.32   | 85.84   | 86.36   | 86.88   | 87.53   | 88.18   |  |
| 14                                    | 89.48   | 89.90   | 90.46   | 91.02   | 91.58   | 92.28   | 92.98   |  |
| 15                                    | 94.03   | 94.48   | 95.08   | 95.68   | 96.28   | 97.03   | 97.78   |  |
| 16                                    | 98.58   | 99.06   | 99.70   | 100.34  | 100.98  | 101.78  | 102.58  |  |
| 17                                    | 103.13  | 103.64  | 104.32  | 105.00  | 105.68  | 106.53  | 107.38  |  |
| 18                                    | 107.68  | 108.22  | 108.94  | 109.66  | 110.38  | 111.28  | 112.18  |  |
| 19                                    | 112.23  | 112.80  | 113.56  | 114.32  | 115.08  | 116.03  | 116.98  |  |
| 20                                    | 116.78  | 117.38  | 118.18  | 118.98  | 119.78  | 120.78  | 121.78  |  |
| 21                                    | 121.33  | 121.96  | 122.80  | 123.64  | 124.48  | 125.53  | 126.58  |  |
| 22                                    | 125.88  | 126.54  | 127.42  | 128.30  | 129.18  | 130.28  | 131.38  |  |
| 23                                    | 130.43  | 131.12  | 132.04  | 132.96  | 133.88  | 135.03  | 136.18  |  |
| 24                                    | 134.98  | 135.70  | 136.66  | 137.62  | 138.58  | 139.78  | 140.98  |  |
| 25                                    | 139.53  | 140.28  | 141.28  | 142.28  | 143.28  | 144.53  | 145.78  |  |
| 26                                    | 144.08  | 144.86  | 145.90  | 146.94  | 147.98  | 149.28  | 150.58  |  |
| 27                                    | 148.63  | 149.44  | 150.52  | 151.60  | 152.68  | 154.03  | 155.38  |  |
| 28                                    | 153.18  | 154.02  | 155.14  | 156.26  | 157.38  | 158.78  | 160.18  |  |
| 29                                    | 157.73  | 158.60  | 159.76  | 160.92  | 162.08  | 163.53  | 164.98  |  |
| 30                                    | 162.28  | 163.18  | 164.38  | 165.58  | 166.78  | 168.28  | 169.78  |  |
| 31                                    | 168.83  | 169.76  | 169.00  | 170.24  | 171.48  | 173.03  | 174.58  |  |
| 32                                    | 171.38  | 172.34  | 173.62  | 174.90  | 176.18  | 177.78  | 179.38  |  |
| 33                                    | 175.93  | 176.92  | 178.24  | 179.56  | 180.88  | 182.53  | 184.18  |  |

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.  
 2) Pick-up is available under a Service Agreement for an added charge of \$5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.  
 3) If tendered at origin airport mail facility, deduct \$3.00 from these rates.



# **SINGAPORE** INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

## **ZONE TO INTERNATIONAL EXCHANGE OFFICE**

| POUNDS<br>(up to<br>and<br>including) | 3       | 4       | 5       | 6       | 7       | 8       | 9       |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|
| 1                                     | \$20.05 | \$20.08 | \$20.12 | \$20.16 | \$20.20 | \$20.25 | \$20.30 |
| 2                                     | 24.60   | 24.66   | 24.74   | 24.82   | 24.90   | 25.00   | 25.10   |
| 3                                     | 29.15   | 29.24   | 29.36   | 29.48   | 29.60   | 29.75   | 29.90   |
| 4                                     | 33.70   | 33.82   | 33.98   | 34.14   | 34.30   | 34.50   | 34.70   |
| 5                                     | 38.25   | 38.40   | 38.60   | 38.80   | 39.00   | 39.25   | 39.50   |
| 6                                     | 42.80   | 42.98   | 43.22   | 43.46   | 43.70   | 44.00   | 44.30   |
| 7                                     | 47.35   | 47.56   | 47.84   | 48.12   | 48.40   | 48.75   | 49.10   |
| 8                                     | 51.90   | 52.14   | 52.46   | 52.78   | 53.10   | 53.50   | 53.90   |
| 9                                     | 56.45   | 56.72   | 57.08   | 57.44   | 57.80   | 58.25   | 58.70   |
| 10                                    | 61.00   | 61.30   | 61.70   | 62.10   | 62.50   | 63.00   | 63.50   |
| 11                                    | 65.55   | 65.88   | 66.32   | 66.76   | 67.20   | 67.75   | 68.30   |
| 12                                    | 70.10   | 70.46   | 70.94   | 71.42   | 71.90   | 72.50   | 73.10   |
| 13                                    | 74.65   | 75.04   | 75.56   | 76.08   | 76.60   | 77.25   | 77.90   |
| 14                                    | 79.20   | 79.62   | 80.18   | 80.74   | 81.30   | 82.00   | 82.70   |
| 15                                    | 83.75   | 84.20   | 84.80   | 85.40   | 86.00   | 86.75   | 87.50   |
| 16                                    | 88.30   | 88.78   | 89.42   | 90.06   | 90.70   | 91.50   | 92.30   |
| 17                                    | 92.85   | 93.36   | 94.04   | 94.72   | 95.40   | 96.25   | 97.10   |
| 18                                    | 97.40   | 97.94   | 98.66   | 99.38   | 100.10  | 101.00  | 101.90  |
| 19                                    | 101.95  | 102.52  | 103.28  | 104.04  | 104.80  | 105.75  | 106.70  |
| 20                                    | 106.50  | 107.10  | 107.90  | 108.70  | 109.50  | 110.50  | 111.50  |
| 21                                    | 111.05  | 111.68  | 112.52  | 113.36  | 114.20  | 115.25  | 116.30  |
| 22                                    | 115.60  | 116.26  | 117.14  | 118.02  | 118.90  | 120.00  | 121.10  |
| 23                                    | 120.15  | 120.84  | 121.76  | 122.68  | 123.60  | 124.75  | 125.90  |
| 24                                    | 124.70  | 125.42  | 126.38  | 127.34  | 128.30  | 129.50  | 130.70  |
| 25                                    | 129.25  | 130.00  | 131.00  | 132.00  | 133.00  | 134.25  | 135.50  |
| 26                                    | 133.80  | 134.58  | 135.62  | 136.66  | 137.70  | 139.00  | 140.30  |
| 27                                    | 138.35  | 139.16  | 140.24  | 141.32  | 142.40  | 143.75  | 145.10  |
| 28                                    | 142.90  | 143.74  | 144.86  | 145.98  | 147.10  | 148.50  | 149.90  |
| 29                                    | 147.45  | 148.32  | 149.48  | 150.64  | 151.80  | 153.25  | 154.70  |
| 30                                    | 152.00  | 152.90  | 154.10  | 155.30  | 156.50  | 158.00  | 159.50  |
| 31                                    | 156.55  | 157.48  | 158.72  | 159.96  | 161.20  | 162.75  | 164.30  |
| 32                                    | 161.10  | 162.06  | 163.34  | 164.62  | 165.90  | 167.50  | 169.10  |
| 33                                    | 165.65  | 166.64  | 167.96  | 169.28  | 170.60  | 172.25  | 173.90  |

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of \$5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

[FR Doc. 78-36286 Filed 12-28-78; 8:45 am]

## Title 46—Shipping

### CHAPTER II—MARITIME ADMINISTRATION DEPARTMENT OF COMMERCE

#### SUBCHAPTER D—VESSEL FINANCING ASSISTANCE

#### PART 298—OBLIGATION GUARANTEES

#### Revision of Part

AGENCY: Maritime Administration, Commerce.

ACTION: Final Rule.

**SUMMARY:** The rule hereby adopted is a revision of the regulations relating to the operation of the program of Obligation Guarantees (Title XI program) authorized by Title XI of the Merchant Marine Act, 1936, as amended (the Act), 46 U.S.C. 1271-1279. The revision conforms the regulations to reflect and implement the extensive technical changes in the program effected by the Federal Ship Financing Act of 1972, P.L. 92-507, amending Title XI of the Act. While Title XI of the Act is applicable to financing assistance for all types of Vessel construction, that part of the Title XI program related to fishing Vessels is administered by the National Oceanic and Atmospheric Administration of the Department of Commerce, (NOAA), pursuant to NOAA regulations, which appear at 50 CFR Part 255.

**EFFECTIVE DATE:** December 29, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Gerard E. Neumann, Director,  
Office of Ship Financing Guarantees,  
Telephone 202-377-3773.

**SUPPLEMENTARY INFORMATION:** On October 8, 1976, the Maritime Administration (MarAd) published in the FEDERAL REGISTER a proposed rule (41 FR 44408) to revise 46 CFR Part 298. The purpose is to provide comprehensive regulations relating to eligibility and other requirements for vessel financing assistance in the form of Obligation Guarantees, authorized by Title XI of the Act, as amended by the Federal Ship Financing Act of 1972.

#### DISCUSSION OF COMMENTS— MODIFICATIONS

MarAd received 24 written comments. All of these comments were considered in adopting the final revision of Part 298.

Nine of the comments recommended the inclusion of a "general waiver" or "general modification" provision, which would allow MarAd greater flexibility in approving Title XI guarantees for a project that does not meet one or more specific requirements in the regulations, but otherwise meets the statutory requirements. This recommendation has not been adopted. The principal purpose for the revision of these regulations has been to inform interested potential participants in the Title XI program of specific requirements and standards that will be applied to determine initial eligibility for Title XI Guarantees and conditions that will be imposed thereafter on participants for continuing the Guarantees. The regulations specifically grant discretion to the Secretary in numerous provisions where MarAd has anticipated the need for greater flexibility.

Some changes have been made in the definitions for purposes of clarification (§ 298.2). "Actual Cost" is now defined exactly as in § 1101(f) of the Act. "Depreciated Actual Cost" has been included in the definitions rather than in § 298.21. The functions of an "Indenture Trustee" have been set forth in more detail.

With respect to the filing of applications (§ 298.3), examples of required information have been included and provision has been made for amendment of an application. A guideline of 120 days has been substituted for the specific time requirement for the filing of a completed application, "in order to afford the Secretary sufficient time for adequate review of the application," and a similar guideline (at least six weeks prior to the anticipated Closing) has been included with respect to timely submission of the Documentation to the Secretary for review. The requirement for compliance with the "guidelines for Documentation" has been deleted.

Establishing citizenship (§ 298.10) has been made applicable only to bareboat charters and charters other than bareboat charters exceeding the time set forth in Part 221, and has been withdrawn as a requirement for shipbuilders unless the shipbuilder becomes the shipowner upon delivery of the Vessel.

Under Vessel requirements (§ 298.11), paragraph (b) has been given a new caption to reflect its emphasis—"Actual Cost"—whether accomplished through solicitation of competitive bids or through negotiation. The Secretary may require the applicant to submit additional technical data, backup cost details and other evidence where considered necessary to make a determination of the estimated actual cost. The requirement for Vessel inspection and certification

by the Coast Guard has been limited to Vessels carrying passengers or freight, in accordance with the applicable Coast Guard regulations, if any. The requirement that reconstruction or reconditioning of a Vessel must increase the Vessel's useful life by at least five years has been eliminated.

Financial requirements (§ 298.13) contain financial definitions only for purposes of that section and §§ 298.35 and 298.42. The definitions of "Working Capital" has been modified as it relates to current liabilities, which shall be increased by "one-half of the annual payment of all charter hire and other lease obligations (having a term of more than six months)", rather than by the amount of "Rentals", and shall be reduced by "any excess of untermated voyage expense over untermated voyage revenue." The definition of "Deferred Lease Hire" has been substituted for the definition of "Rentals". The authority of the Secretary to waive or modify requirements has been extended to encompass the financial "terms" (definitions), upon determining that there is "adequate security for the Guarantees", in lieu of the requirement that the Secretary make a specific determination that there is "substantial security in addition to that usually required in the Security Agreement".

Obligations secured by multiple Vessels may have a maturity date not later than twenty-five years from the delivery date of the last Vessel, and the condition imposed on the applicant to reduce the amount of Obligations below the maximum allowed under the Act has been deleted from the proposed language (§ 298.20). The required redemption provision will be invoked to maintain adequate security for the Guarantees where the Secretary considers such action to be necessary. No procedural rules or expansion of criteria have been adopted as guidelines for the Secretary's required determination that the interest rate is reasonable, as has been recommended by five of those submitting comments. In this regard, incorporating the language of § 1104(b)(5) of the Act in the regulations was intended to allow the Secretary to exercise broad discretion in considering all relevant factors, not only those specifically required to be considered. No provision has been made to allow a variable interest rate.

A provision has been added to state that where eligibility for Guarantees up to 87½ percent of Actual Cost is dependent upon satisfaction of a minimum horsepower for the main engine, the standard shall be continuous rated horsepower (§ 298.21). Eight of the comments received contained recommendations that consideration be given to expanding the items that are



includible in Actual Cost, upon which the limit for the Guarantees is based, e.g., legal and accounting fees, amounts paid for arranging financing, underwriting or trustee fees, the cost of shoreside spare parts and payments for early delivery. The cost of shoreside spare parts has been specifically included as an Actual Cost item. The exclusion of any amount payable to the shipyard for early delivery has been qualified by use of the word "generally", thus allowing the Secretary some discretion to allow this item where considered appropriate. After careful consideration of the merits of removing or qualifying the exclusion of other items, the decision has been made to reject the recommendations, principally because the determination that the amounts result from arms length transactions of business, poses a considerable administrative burden. With respect to escalation as part of Actual Cost, the examples of indices to be used have been deleted, in deference to comments that they are of little value.

The section on Refinancing (§ 298.23) has been substantially rewritten to clarify the circumstances under which debt incurred more than one year after the delivery or redelivery of a related Vessel may be refinanced. The provisions requiring that the refinancing result in a reduced average annual interest payment of at least 20 percent provoked critical responses from 12 of those submitting comments. In view of the compelling arguments showing the economic advantages of refinancing, aside from significant reduction in the annual average interest payment, this requirement has been eliminated.

MarAd has given careful consideration to comments stating that our interpretation of "facilities and equipment related to marine operations", that may be financed with the proceeds from Obligations, is unduly restrictive and contrary to clear legislative intent. (§ 298.24). MarAd rejects as unreasonable an expansive interpretation of the term "port facilities" that would include permanent or semipermanent structures and real estate.

The prohibition against the payment of excess interest or other consideration has been redrafted more precisely, consistent with a recommendation in the submitted comments (§ 298.26). It applies only to the payment of any consideration, in the nature of interest, which is in excess of the rate approved by the Secretary, as well as to the grant of any security other than the Guarantees. The requirement that the Secretary approve any lease payments has been restricted to lease or charter hire payment for a Vessel that is security for the Obligations, if payment of principal and

interest on the Obligations would in any way be dependent upon the proceeds from such lease or charter hire (§ 298.27). This is a specific part of the analysis made by the Secretary in determining an economic soundness, described in § 298.14.

The section relating to conditions of the Mortgage (§ 298.31) had been made more flexible with respect to provision in the Fleet Mortgage for payment of the Obligations in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage. The Secretary is given discretion to discharge the vessel from the Mortgage lien, without requiring payment of the related Obligations, upon determining that adequate security remains for the Guarantees.

The Escrow Fund section (§ 298.33) has been restructured with respect to principal deposit requirements. The rules for allocating Obligations proceeds on an individual vessel basis, where multiple vessels are security for the Guarantees, has been liberalized by allowing allocation to specific vessels. This modification is in response to critical comments that the required allocation to all vessels is inconsistent with the intent of § 1108(a) of the Act and would unfairly restrict withdrawals from the Escrow Fund under some circumstances. The provision for interest deposit has been clarified to state that the basis for calculation shall reflect the principal and interest, if any, remaining on deposit in the Escrow Fund. With respect to disbursements to the Obligor from the fund, the request must be made "no later", rather than "no earlier", than 30 days after the interest payment due date.

The Reserve Fund and Financial Agreement provisions have been modified slightly (§ 298.35). The test of whether a Company no longer meets the alternative financial requirements, so as to become subject to additional covenants, is made after including the "annual financial liability related to the Obligations as a current liability in computing Working Capital," a general description of such liability applicable to any participant in the project subject to financial requirements. Whenever a Company's financial condition improves so that it meets the primary financial requirements the Company may elect to be subject to the covenants applicable to a Company that had satisfied these requirements at Closing, with the consent of the Secretary, rather than be required to promptly inform the Secretary of the change in condition. Title XI Reserve Fund Net Income of a Company required for Reserve Fund deposits shall be computed within 105 days after the end of the accounting year, a change from a 90 day requirement. In

making the computation, the numerator of the ratio shall be the total original capitalized cost of all Company Vessels "(whether leased or owned)."

The rules for determining the variable rate of Guarantee Fee (§ 298.36) after Vessel delivery have been redrafted to be consistent with the structure of the rules relating to the determination of the variable rate prior to delivery. In response to criticisms that the Examination and Audit authority of the Secretary was too broad in its application, it has been restricted to books and records "which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel, as well as records of Affiliates and domestic agents connected with such Persons."

Periodic reporting requirement with respect to auditing (§ 298.42) has been modified to specify that the auditors must be independent certified public accountants or licensed public accountants "Licensed to practice by the regulatory authority of a state or other political subdivision of the United States". The required annual financial report shall be due within 105 days after the close of each fiscal year of the company, rather than 90 days.

This revision of Part 298 has been reviewed in accordance with Executive Order 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), Department of Commerce Administrative Order 218-7, "Issuing Government Regulations" and the Maritime Administration implementing procedures, and a determination has been made that a regulatory analysis is not required.

Accordingly, Part 298 of Title 46, Code of Federal Regulations is revised to read as follows:

## PART 298—OBLIGATION GUARANTEES

### Subpart A—Introduction

- Sec.  
298.1 Purpose.  
298.2 Definitions.  
298.3 Applications.

### Subpart B—Eligibility

- 298.10 Citizenship.  
298.11 Vessel requirements.  
298.12 Operator's qualifications.  
298.13 Financial requirements.  
298.14 Economic soundness.  
298.15 Investigation Fee.  
298.16 Substitution of participants.

### Subpart C—Guarantees

- 298.20 Term, redemptions and interest rate.  
298.21 Limits.  
298.22 Amortization of Obligations.  
298.23 Refinancing.

- 298.24 Financing facilities and equipment related to marine operations.  
298.25 Financing repayment of construction-differential subsidy.  
298.26 Excess interest or other consideration.  
298.27 Lease payments.  
298.28 Advance of principal payments on the Obligations.

### Subpart D—Documentation

- 298.30 Nature and content of Obligations.  
298.31 Mortgage.  
298.32 Required provisions in Documentation.  
298.33 Escrow Fund.  
298.34 Construction Fund.  
298.35 Reserve Fund and Financial Agreement.  
298.36 Annual Guarantee Fee.  
298.37 Examination and audit.

### Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

- 298.40 Defaults.  
298.41 Remedies after default.  
298.42 Reporting requirements—financial statement.  
298.43 Applicability of regulations.

### Subpart F—Administration [Reserved]

**AUTHORITY:** Part 298 is issued pursuant to §§ 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036), and Department of Commerce Organization Order 10-9 (36 FR 19707, July 23, 1973).

### Subpart A—Introduction

#### § 298.1 Purpose.

This part prescribes regulations implementing the provisions of Title XI of the Merchant Marine Act, 1936, as amended by P.L. 92-507 (46 U.S.C. 1271-1279), governing Federal ship financing assistance.

#### § 298.2 Definitions.

For the purpose of this part—

(a) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) "Actual Cost" of a Vessel means, as of any specified date, the aggregate, as determined by the Secretary, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel (described in § 298.21(b)).

(c) "Affiliate" or "Affiliated" means, any Person directly or indirectly controlling, controlled by or under common control with another Person.

(d) "Closing" means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated

and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Preferred Mortgage is executed as security to the Secretary.

(e) "Depository" means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof or the District of Columbia, which is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation and accepts deposits for purposes of implementing the program authorized by Title XI of the Act.

(f) "Depreciated Actual Cost" of a Vessel means the Actual Cost of the Vessel, as defined in subsection (b) of this section (less a residual value of 2½ percent of United States shipyard construction cost), depreciated on a straightline basis over the useful life of the Vessel as determined by the Secretary, not to exceed twenty-five years from the date the Vessel was delivered by the shipbuilder or, if the Vessel has been reconstructed or reconditioned, the Actual Cost of the Vessel depreciated on a straightline basis from the date the Vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary.

(g) "Documentation" means all or part of the agreements relating to an entire Title XI financing which must be furnished to the Secretary, irrespective of whether the Secretary is a party to each agreement.

(h) "Guarantee" means the contractual commitment of the United States of America, represented by the Secretary, endorsed on each Obligation, to make payment to the Obligor or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default (described in § 298.40 of this part) and the date of payment.

(i) "Guarantee Fee" means the annual fee payable to the Secretary in consideration for the continuing Guarantees.

(j) "Indenture Trustee" means a bank with corporate trust powers or a trust company with a combined capital and surplus of at least \$3,000,000, which has duties under the terms of a Trust Indenture, entered into with the

Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursement of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligor. Pursuant to a specific authorization of the Secretary, the Indenture Trustee may also authenticate the Guarantees.

(k) "Letter Commitment" means a letter from the Secretary to an applicant for Guarantees, setting forth specific determinations made by the Secretary with respect to the applicant's proposed project, as required by the Act and regulations of this part, and stating the Secretary's commitment to execute Guarantees, subject to compliance by the applicant with any conditions specified therein.

(l) "Maritime Administration" means that agency created within the Department of Commerce by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036).

(m) "Mortgage" includes a Preferred Mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a Preferred Mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended.

(n) "Obligation" means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

(o) "Obligor" means the holder of an Obligation.

(p) "Obligor" means any party primarily liable for payment of principal of or interest on any Obligation.

(q) "Paying Agent" means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

(r) "Person" means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

(s) "Preferred Mortgage" means a Mortgage which is recorded, endorsed and otherwise in compliance with the requirements of the Ship Mortgage Act, 1920, as amended (46 U.S.C. 911-984).



(t) "Secretary" means the Secretary of Commerce, acting by and through the Assistant Secretary of Commerce for Maritime Affairs, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Commerce or the Assistant Secretary of Commerce for Maritime Affairs.

(u) "Secretary's Note" means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(v) "Security Agreement" means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the obligor to the Secretary as security for the issuance of Guarantees.

(w) "Vessel" means all types of vessels, whether in existence or under construction, including passenger-cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States.

#### § 298.3 Applications.

(a) *Content and Amendment.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, United States Department of Commerce, Washington, D.C. 20230, and be certified in the manner prescribed on said form. All required information, including copies of any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements with respect to the Vessel or Vessels, shall be presented on the form or in exhibits and schedules submitted with the application. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees, stating the name of the applicant and the date of the application. Any amendment of data contained in the application filed shall be marked

"Amendment," and shall contain a statement on the first page thereof, clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of application. The certification required on Form MA 163 shall be affixed to each amendment. The Secretary will not process the application until the applicant has submitted substantially all required information.

(b) *Time requirements.* Each application should be submitted to the Maritime Administration sufficiently prior to the anticipated date by which the applicant requires a Letter Commitment, in order to afford the Secretary sufficient time for adequate review of the application. It usually takes the Secretary at least 120 days to process an application and issue a Letter Commitment. An applicant to whom a Letter Commitment has been issued shall submit four sets of the Documentation to the Secretary for review. The Documentation should be submitted to the Secretary for review sufficiently prior to the anticipated Closing to afford the Secretary time to complete an adequate review of the Documentation. In most instances, at least six weeks should be allotted for the review of the Documentation. The applicant should utilize the standard form of Documentation which will be provided by the Secretary when, in the opinion of the Secretary, there is a reasonable degree of certainty that a Letter Commitment will be issued.

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of \$1,000, which will be non-refundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(d) *Confidential Information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. The same requirement shall apply to any amendment to the application. If no claim of exemption is made when the application or amendment is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act (FOIA), of any information contained in the application. The following procedures shall apply with respect to the assertion and review of FOIA exemption claims:

(1) *Form and bases for claim.* Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked "Confidential

Information," addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, by a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments or amendments thereto, to which exemption from disclosure is claimed by noting "Confidential Information" thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority.

(2) *Determination and advice.* The Secretary, Maritime Administration, shall make a determination as to any claim of exemption made by the applicant, pursuant to the preceding paragraph. If the Secretary, Maritime Administration, makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality in the event of any request for production of such information made pursuant to the Freedom of Information Act.

(3) *Return of information.* If a determination unfavorable to the applicant is made as to any item of information in the application or amendment, the applicant will be advised that unless a request for return of such information is made by registered mail to the Secretary, Maritime Administration, postmarked within 30 days of the date of the letter advising the applicant of the unfavorable determination, the information shall be associated with the balance of the application for processing, and shall be subject to disclosure by the Maritime Administration upon receipt of any request for disclosure under the Freedom of Information Act. If a request for return of information is made, the Maritime Administration will retain no copies of such information, and will process the application based only on the information that has not been returned.

#### Subpart B—Eligibility

##### § 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act, the applicant and any other Person, (including, but not limited to settlers, owner trustees, owner participants, bareboat charterers and such charterers other than bareboat charterers whose charter exceeds the blanket approval period provided for in Part 221 of this Title 46), shall establish its United States citizenship, within the meaning of section 2 of the

Shipping Act, 1916, (1916 Act), as amended, (46 U.S.C. 801-852), sections 37 and 38 of the Merchant Marine Act, 1920, as amended, (46 U.S.C. 861-889), and, as applicable, section 905(c) of the Act, unless the Secretary approves a non-citizen participation under the authority of sections 9 and 41 and Section 37, as applicable, of the 1916 Act. The Secretary will not approve an application providing for ownership of such Vessel by, or bareboat chartering of such Vessel to, a non-U.S. citizen. See also Part 221 of this Title 46 concerning the documentation, transfer or charter of vessels to non-U.S. citizens. Citizenship may also be required of any Person who does not have a legal or beneficial ownership in the Vessel if such Person is the operator or has authority to direct the operation of the Vessel on behalf of the Shipowner.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR Part 355.

(c) *After Letter Commitment.* Any Person who has become identified with the project, for a reason indicated in paragraph (a) of this section, and who has not previously established United States citizenship within the prior twelve calendar months, promptly shall establish its United States citizenship in the form and manner prescribed in 46 CFR Part 355.

(d) *Supplemental proof.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (c) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such Closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such Closing.

##### § 298.11 Vessel requirements.

Each Vessel to be constructed, reconstructed or reconditioned and financed by issuance of Guarantees shall meet the following criteria:

(a) *United States construction.* The Vessel shall be constructed, reconstructed or reconditioned entirely in a shipyard or shipyards of the United States, within the meaning of section 505 of the Act, and, where practicable, only from articles, materials and supplies of the growth, production or

manufacture of the United States, as defined in section 1401(h) of the Tariff Act of 1930 (10 U.S.C. 1401(h)). If an applicant for Guarantees elects to use foreign-source materials or components in the Vessel, the cost thereof shall not be included in the Actual Cost of the Vessel used as the basis for determining the amount of Guarantees, as set forth in § 298.21, except if the Secretary shall approve an application for waiver upon determining that:

(1) The article, material or supply is not customarily grown, produced or manufactured in the United States; or

(2) With respect to other than major components of the hull or superstructure, and any material used in the construction thereof, compliance with the United States origin requirement of this section would unreasonably delay completion of a Vessel beyond its contract delivery date, provided that the applicant submits evidence satisfactory to the Secretary that due diligence was employed to obtain materials of United States origin.

(b) *Actual Cost.* The applicant's estimated actual cost as described in § 298.21(b), must be approved by the Secretary for the construction, reconstruction, reconditioning of a vessel as a condition for issuance of the Letter Commitment. The Secretary may require the applicant to have the shipyard with whom he has contracted to build the vessel to submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data. The estimated cost of the vessel may include escalation for the anticipated construction period of the vessel, as described in § 298.21(e).

(c) *Class, condition and operation.* The Vessel shall be constructed, maintained and operated so as to meet the highest classification, certification, rating and inspection standards for vessels of the same age and type imposed by the American Bureau of Shipping (ABS), or such other standards as may be approved by the Secretary, and comply with all applicable laws, rules and regulations as to condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and all applicable treaties and conventions to which the United States is signatory, including, but not limited to the International Convention for Safety of Life at Sea. All Vessels carrying passengers or freight shall be deemed to be carrying such passengers or freight for hire, and shall be inspected and certificated in accordance with the applicable United States Coast Guard regulations, if any,

at the earlier of the delivery of such Vessel or Vessels and the initial Closing.

(d) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of class (if the Vessel is classified), and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

##### § 298.12 Operator's qualifications.

No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

##### § 298.13 Financial requirements.

(a) *In general.* To be eligible for Guarantees, the applicant and other participants in the project must submit at the time of application, and as subsequently required by the Secretary, financial information satisfactory to the Secretary that financial resources are or will be available to support the project which is the subject of the Title XI application.

(b) *Financial definitions.* For the purpose of this section 298.13 and sections 298.35 and 298.42 of this part—

(1) "Company" means any Person subject to financial requirements imposed under paragraphs (d) and (e) of this section and paragraphs (b) and (c) of § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) "Working Capital" means the difference between current assets and current liabilities, both determined in



accordance with generally accepted accounting principles, adjusted as follows:

(i) Current assets shall be reduced with respect to:

(A) Amounts in or required to be set aside in any Title XI Reserve Fund, pursuant to § 298.35(e) or CCF Security Amount prescribed by § 298.35(f), (excluding that portion of such fund which is available for the payment of current liabilities) that is being maintained pursuant to an agreement covering a Vessel owned or leased by the Company, or in another similar fund required under any other mortgage, indenture or other agreement to which the Company is a party;

(B) Any securities, obligations or evidences of indebtedness of an Affiliate of the Company or of any stockholder, director, officer or employee (or any member of the family of the Company or of such Affiliate) except reasonable advances to agents required for the normal current operation of the Company's Vessels and receivables outstanding for not more than 60 days, arising out of the ordinary course of business; and

(C) An amount equal to any excess of untermi-nated voyage revenue over untermi-nated voyage expense, except where the Secretary determines such reduction to be inappropriate.

(ii) Current liabilities shall be increased by one-half of the annual payment of all charter hire and other lease obligations (having a term of more than six months), other than charter hire and other lease obligations already included and reported as a current liability on the Company's balance sheet. Further, in determining current liabilities there shall be deducted any excess of untermi-nated voyage revenue over untermi-nated voyage expense, except where the Secretary determines such reduction to be inappropriate.

(3) "Equity" (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but exclusive of (i) any receivables from an Affiliate of the Company or any stockholder, director, officer, or employee (or any member of the employee's family) of the Company (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and (ii) any increment resulting from the reappraisal of assets.

(4) "Long Term Debt" means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long Term Debt in accordance with generally accepted

accounting principles, less the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. There shall also be included Deferred Lease Hire, any guarantee or other liability for the debt of any other Person (except fees and expenses of an Indenture Trustee and endorsements for deposits of checks and other negotiable instruments acquired in the ordinary course of business). Deferred income taxes shall not be included in Long Term Debt.

(5) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel and those other items which customarily would be capitalized as Vessel costs under generally accepted accounting principles.

(6) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel, depreciated on a straight line basis over the same useful life of the Vessel as determined by the Secretary for Actual Cost, and depreciated as required by § 298.21(g).

(7) "Deferred Lease Hire" means as of any date, the outstanding long term portion of lease or charter hire (other than lease or charter hire already included and reported as a liability on the Company's balance sheet) relating to vessels, major equipment or facilities leased or chartered by the Company. The Secretary shall determine:

(i) Which leases or charters are to be included in the computation of Deferred Lease Hire; and

(ii) The computation of the outstanding long term portion of such lease or charter hire, which computation will not exceed the greater of:

(A) The amount of the Obligations relating to the leased or chartered asset;

(B) One-half the aggregate of all lease or charter hire (excluding operating components) over the term of the lease or character; and

(C) The amount determined in accordance with generally accepted accounting principles.

(c) *Applicability.* The financial resources shall be adequate to meet the Equity requirements in the project and existing Working Capital requirements, as set forth in paragraphs (d) and (e) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels to be security to the Secretary for the Guarantees, except that if the owner is not the operator, the overall financial requirements shall be allocated among the owner, the operator and other parties as determined by the Secretary.

(2) The Company shall satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which

may be imposed upon it in connection with other Vessels financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, a pro forma balance sheet shall be submitted at the time of the application, reflecting any adjustment made pursuant to paragraph (d)(1)(i) of this section, and a revised pro forma balance sheet, reflecting the completion of the projected financing, shall be submitted at least five business days before the first Closing at which the Obligations are issued.

(d) *Primary financial requirements at Closing.* Where the primary minimum financing requirements at Closing are satisfied, the financial convenants in § 298.35(b) are applicable. Primary financial requirements can apply to one or more Companies, and are determined as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal Vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, the Secretary may adjust the requirement as considered appropriate. Also, if the Secretary determines that the Company's Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, the Secretary may make adjustments to the Working Capital requirements.

(ii) *Equity (net worth).* The Company's Equity shall be the greater of (A) 50 percent of its Long Term Debt or (B) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment.

(2) *Lessee or charterer as operator.* Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The operator's Working Capital requirement shall be the same as that which would have otherwise been imposed on the owner as operator under subparagraph (1) (i) of this paragraph (d) and based on the same premise stated therein.

(ii) *Long Term Debt.* The operator's Long Term Debt shall not be greater than twice its Equity.

(iii) *Equity (net worth).* Different Equity requirements shall be imposed

on the owner and operator of the Vessel, respectively, as follows:

(A) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(B) The operator's Equity shall be the same as that which would have otherwise been required of the owner as operator under subparagraph (1)(ii) of this paragraph (d).

(e) *Alternative financial requirements at Closing.* If the applicant is unable to demonstrate to the satisfaction of the Secretary that there is or will be compliance with the primary financial requirements at Closing set forth in paragraph (d) of this section, eligibility for Guarantees shall be based upon satisfaction of alternative minimum financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this part. Alternative financial requirements are as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, the alternative requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital, which may be adjusted by the Secretary in accordance with the provisions set forth in paragraph (d)(1)(i) of this section, shall be an amount at least equal to the sum of the following (less the annual financing liability related to the Obligations):

(A) Eight percent of the estimated Capitalizable Cost of a Vessel to be financed upon delivery (redelivery in the case of a reconstructed or reconditioned Vessel), or eight percent of the estimated Depreciated Capitalizable Cost of a Vessel to be financed or refinanced after delivery. With respect to a reconstructed or reconditioned Vessel, the estimated Capitalizable Cost or Depreciated Capitalizable Cost, whichever is applicable (depending upon when financing occurs), shall be that related only to the cost of work performed in the reconstruction or reconditioning;

(B) One year's premium for vessel insurance including Hull, Machinery, Protection and Indemnity, and War Risk coverage; and

(C) One year's Guarantee Fee.

(ii) *Equity (net worth).* The Company's Equity shall be at least equal to 90 percent of the Equity as shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but not less than the sum of the following:

(A) The difference between (1) the estimated Capitalizable Cost of a new

Vessel to be financed upon delivery, the estimated Capitalizable Cost of the work to be performed in reconstructing or reconditioning a Vessel, the Depreciated Capitalizable Cost of an existing Vessel to be refinanced or the Depreciated Capitalizable Cost of a new Vessel to be financed after delivery, and (2) the amount of the Guarantees; and

(B) The amount of Working Capital as determined in accordance with the provisions of subdivision (1)(i) of this paragraph.

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the alternative financial requirements at Closing usually are as follows:

(i) *Working Capital.* The Company shall have Working Capital in an amount determined in accordance with the provisions of subdivision (1)(i) of this paragraph (e), applicable if the owner were the operator.

(ii) *Equity (net worth).* Different Equity requirements shall be imposed on the operator and the owner, respectively as follows:

(A) The operator shall have Equity at least equal to 90 percent of the Equity shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but no less than its Working Capital requirement.

(B) The owner shall have Equity in an amount determined in accordance with the provisions of subdivision (1)(ii)(A) of this paragraph (e).

(f) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, the Secretary may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraphs (d) and (e) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(g) *Subordinated debt considered to be Equity.* With the consent of the Secretary, part of the Equity requirements applicable under paragraphs (d) and (e) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Reserve Fund and Financial Agreement (described in § 298.35 of this part). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees or mortgage insurance under Title XI, unless the Obligor and the lender

enter into a written agreement, satisfactory to the Secretary, providing, among other things, that if any Title XI financing or advance by the Secretary to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness incurred by the Obligor and to any security interest obtained by the Secretary in that property or other property, with respect to the subsequent indebtedness.

(h) *Modified requirements.* The Secretary may waive or modify the financial terms or requirements otherwise applicable under §§ 298.13, 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. The Secretary may impose similar financial requirements on any Person providing other security for the Guarantees.

#### § 298.14 Economic soundness.

No Letter Commitment for Guarantees shall be given by the Secretary without finding that the proposed project, with respect to which the Vessel or Vessels are to be financed under Title XI, will be economically sound. In making the economic soundness finding, the Secretary shall consider, together with other factors, the market potential for the employment of the Vessel or Vessels over the life of the Guarantees, projected revenues and expenses of the operation, the length of the Guarantee period and any charters, contracts of affreightment, transportation agreements or similar agreements which will assure the employment of the Vessel or Vessels.

#### § 298.15 Investigation Fee.

(a) *In general.* Prior to the issuance of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment.

This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable) and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fees shall be due and payable.

(b) *Maximum.* The Investigation Fee, including any amount imposed pursuant to paragraph (d) of this section, shall not exceed one-half of one percent of the aggregate amount of Obligations to be issued. The \$1,000 filing fee previously paid upon filing the original application (described in § 298.3) shall be credited against the Investigation Fee.



(c) *Base fee.* The base fee shall be as follows:

(1) *After Vessel completion.* If Guarantees are issued after construction, reconstruction or reconditioning of the Vessel or Vessels that serve as security for the Guarantees, the fee shall be \$1,000 for the first \$300,000 of Obligations plus one-eighth of one percent of the balance of the Obligations.

(2) *Before Vessel completion.* If Guarantees are issued before completion of the project, the base fee shall be 110 percent of that charged with respect to a completed project; however, if all the proceeds from the sale of the Obligations relating to a Vessel are deposited into the Escrow Fund until the delivery of such Vessel, the base fee shall not exceed \$1,000 above the base fee calculated in accordance with Section 298.15(c)(1).

(d) *Amendment of application.* In the event an amendment to an application is filed with the Secretary, additions to the base fee shall be imposed under the following circumstances:

(1) *Before Documentation reviewed.* There shall be an additional charge of \$3,000 to pay the cost of processing an amendment made after the Letter Commitment has been issued, but before review of the Documentation by the Maritime Administration, if the Secretary determines that the amendment represents a substantial change in the application. A substantial change would include, but not be limited to, a change from the ownership to a sale and leaseback arrangement, drastic alteration of the Vessel design, large cost increases or other changes that affect the basic economics of the project.

(2) *After Documentation reviewed.* If an amendment is made after review of the Documentation and prior to the sale of any Obligation, and the Secretary determines that the amendment represents a substantial change in the Documentation, there shall be an additional charge of one-half of the Investigation Fee charged pursuant to paragraph (c) of this section, but not more than \$50,000. A substantial change would include, but not necessarily be limited to, a basic change in the structure of the financing, such as a change from an ownership to a sale and leaseback arrangement, or a substitution of parties resulting in a basic change affecting the credit risk of the financing. Ordinary changes in the Documentation such as cost changes, assignments, simple substitutions of parties, not affecting the basic credit or structure of the transaction, and other similar changes shall not be construed to be a substantial change.

#### § 298.16 Substitution of participants.

Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amendment by P.L. 92-507. A non-refundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable, as follows:

(a) *Mortgage assignment.* A mortgagee applying for permission to assign an insured mortgage to another Person shall pay a fee of \$1,500 to defray the costs of processing and reviewing the application.

(b) *Mortgage assumption.* Payment of \$3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

#### Subpart C—Guarantees

#### § 298.20 Term, redemptions and interest rate.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, not exceeding the anticipated physical and economic life of the Vessel or Vessels. Such maturity date may be less than but in no event more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees; and

(3) The later of twenty-five years from the date of original delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as determined by the Secretary.

(b) *Required redemptions.* Where multiple Vessels are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation of a stated maturity must be determined by the Secretary to be reasonable, taking into account the range of interest prevailing in the

private market for similar loans and the risks assumed by the Secretary.

#### § 298.21 Limits.

(a) *Actual Cost basis.* The amount of Obligations to be issued shall be satisfactory to the Secretary based upon the economic soundness of the transaction. Such amount may be less than but in no event more than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels. If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard with respect to such horsepower shall be continuous rated horsepower. Where existing debt is being refinanced, pursuant to section 1104(a)(4) of the Act, the amount of new Obligations issued in respect to such existing debt may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) Seventy-five or 87½ percent whichever is applicable, of the Depreciated Actual Cost of the Vessel with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel construction costs such as designing, engineering, constructing (including performance bond premiums approved the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually specified in Vessel construction contracts, e.g., changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid on subordinated debt considered to be Equity, and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. In approving Actual Cost the Secretary will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

- (1) Legal fees or expenses;
- (2) Accounting fees or expenses;
- (3) Commitment fees or interest other than those specifically allowed;
- (4) Fees, commissions or charges for granting or arranging for financing;
- (5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing

documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Federal documentary tax stamps;

(8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;

(9) Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act and § 298.36 of this part;

(10) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;

(11) The cost of the condition survey required by § 298.11(d) of this part and all work necessary to meet the standards set forth therein;

(12) The cost of all items of material installed in the Vessel which are of foreign origin unless the Secretary has granted a waiver, as provided for in § 298.11(a) of this part;

(13) The cost to the Shipowner of a Vessel which is to be reconstructed or reconditioned, e.g., cost of acquisition or repair work; and

(14) Generally not include any amount payable to the shipyard for early delivery of the Vessel.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in § 298.33 and § 298.34 of this part), and prior to the final Actual Cost determination for each Vessel, the applicant shall submit to the Secretary documents substantiating all claimed costs eligible under § 298.21(b). These documents may include but need not be limited to copies of invoices, change orders, subcontracts and, where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions contained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by the Secretary. The Secretary must subsequently approve the amount of escalation claimed by the applicant as Actual Cost.

(f) *Moneys received in respect of construction of the Vessels.* If the Obligor

or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect to construction of a Vessel (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, the Obligor shall give written notice of such fact to the Secretary. So long as the Guarantees have not been paid by the Secretary, the Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel owner of liquidated damages for late delivery of the Vessel. If the Secretary shall have paid the Guarantees, the Obligor or other recipient shall promptly pay these moneys including any liquidated damages to the Secretary for deposit into the Federal Ship Financing Fund.

(g) *Depreciated Actual Cost.* After a Vessel has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel.

#### § 298.22 Amortization of Obligations.

Generally after Vessel delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(1) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity; or

(2) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity.

#### § 298.23 Refinancing.

The Secretary may approve Guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt had been issued for one of the purposes set forth in section 1104(a)(1)–(3) of the Act. If the existing debt was incurred more than one year after the delivery or redelivery of the related Vessel, the proceeds of such Obligations must be applied to the construction, reconstruction or reconditioning of other Vessels or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). Further, the refinancing of existing debt will be permitted only if any security lien on the Vessel or Vessels is discharged immediately prior to the placing of a Mortgage on the Vessel or Vessels by the Secretary. The applicant must satisfy all the eligibility requirements set forth in Subpart B of this part.

#### § 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction, or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

#### § 298.25 Financing repayment of construction-differential subsidy.

The Secretary may approve Guarantees with respect to Obligations secured by one or more Vessels and issued to finance the repayment to the United States of the whole or any part of construction-differential subsidy (CDS) which has been paid under the provisions of Title V of the Act. The repayment of CDS may be related to Vessel operation in domestic trade, within the meaning of section 506 of the Act, or any other purpose authorized by the Secretary.

#### § 298.26 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligor of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as inter-



est in excess of the rate approved by the Secretary; or

(b) Grants of security to an Obligor in addition to the Guarantees.

#### § 298.27 Lease payments.

If payment of principal and interest on Obligations would in any way be dependent upon the lease or charter hire payments for a Vessel that is security for the Obligations, the amount and conditions of lease or charter payments shall be subject to the Secretary's approval.

#### § 298.28 Advance of principal payments on the Obligations.

The Secretary, shall have the discretion to make or commit to make an advance or advances of principal on the Obligations, based on the determination that the Company has insufficient cash flow or other access to capital to make such payment or payments and there is a reasonable expectation that such advances will be repaid. The terms of an advance shall be satisfactory to the Secretary and shall include but not necessarily be limited to:

(a) The interest rate shall be equal to the greater of: (1) the sum of the effective interest rate borne by the Obligations and a guarantee fee computed in accordance with § 298.36; or (2) the sum of the interest rate Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and a guarantee fee computed in accordance with § 298.36.

(b) The advance may have a maturity date no later than that of the Obligations;

(c) The advance shall have periodic payments of principal and interest payable, to the extent practicable, on the same dates as that of the Obligations with the right of prepayment at any time without premium.

(d) As long as any advance is outstanding, no dividends can be paid without prior written consent of the Secretary provided, however, that if the Obligations and such advance or advances are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(e) The advance, both as to principal and interest relating to the advance of principal shall be secured by the Mortgage.

#### Subpart D—Documentation

##### § 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper shall include on

its face the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Guarantee of the United States, authenticated by the Indenture Trustee. If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to, time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

##### § 298.31 Mortgage.

(a) *In general.* Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of security interest in one or more Vessels, in favor of the Secretary. During construction of a new Vessel, the security interest may be perfected by a filing under the Uniform Commercial Code or by the recording of any form of mortgage in a jurisdiction where the Uniform Commercial Code has not been enacted. The Security Agreement shall provide that upon delivery of the new Vessel, or at the time Guarantees are issued with respect to an existing Vessel, a Preferred Mortgage shall be executed in favor of the Secretary. The Preferred Mortgage shall be recorded with the United States Coast Guard at the Vessel's home port, endorsed upon the Vessel's document (or provision made for said endorsement within 21 days of recordation) and delivered to the Secretary.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to the Secretary by the Obligor. If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage shall be executed upon delivery of the first vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to the Secretary's Mortgage lien. The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and

outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage. The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. The Secretary may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), with respect to all related Obligations, as deemed necessary to maintain adequate security for the Guarantees. Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid, unless the Secretary shall otherwise determine that there remains adequate security for the Guarantees, and the Vessel shall be discharged from the Mortgage lien.

##### § 298.32 Required provisions in Documentation.

(a) *Performance under shipyard and related contracts.* Generally, shipyard and related contracts shall contain provisions for:

(1) Furnishing by the shipyard of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard demonstrates to the satisfaction of the Secretary that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel, as well as all related work projects being performed by the contractor and subcontractors, to a representative of the Secretary, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel is being constructed, reconstructed or reconditioned in accordance with contract plans and specifications approved by the Secretary;

(3) Submitting to the Secretary, upon request, one set of selected microfilm of shipyard plans for the Vessel as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard in a form acceptable to the Secretary, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard and a representative of the Secretary as to each payment;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless the Secretary consents in writing to such use; and

(6) Requiring the use in Vessel construction of only articles, materials and supplies of the growth, production

or manufacture of the United States, as described in detail in section 298.11(a) of this part. If Obligations will not be issued during the period of construction of a Vessel, shipyard and related contracts should generally include the provisions specified in paragraph (a) (2), (3) and (6) of this section.

(b) *Assignments and general covenants from Obligor to Secretary.* The Obligor shall assign rights and shall covenant with the Secretary, as required by the Secretary, including, but not limited to, the following:

(1) Assignment of all or part of the right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due with respect to Vessel construction;

(3) Assignment, where applicable, of all or a part of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel and all hire payable to the Obligor, and delivery to the Secretary of required consents by appropriate parties to any such assignments;

(4) Covenants relating to the annual filing of satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR 355; warranty of Vessel title free from all liens other than those specifically excepted; maintaining United States registry of the Vessel; compliance with the provisions of the Ship Mortgage Act of 1920; Notice of Mortgage, payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountants;

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish to the Secretary a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified or independent licensed public accountants unless otherwise verified by the Secretary; and

(ii) Costs of American and foreign materials (including services);

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the Vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery, and Protection and Indemnity coverages underwritten by the Maritime

Administration as authorized by Title XII of the Act; and such additional insurance as may be required by the Secretary. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by the Secretary by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by the Secretary through marine insurance brokers and/or underwriting agents approved by the Secretary. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by the Secretary and/or under such other forms of policies which the Secretary may approve in writing and/or policies issued by or for the Maritime Administration insuring the Vessel against the usual risks provided for under such forms, including such amounts of increase value other forms of "total loss only" insurance permitted by the Hull and Machinery insurance policies; and

(7) Collateralize other debt due to the Secretary under other Title XI financings.

##### § 298.33 Escrow Fund.

(a) *Circumstances requiring deposits.* The Obligor may be required to establish a fund with the Secretary (Escrow Fund) in accordance with section 1108(a) of the Act and the Security Agreement. The deposit with the Secretary shall be in cash or Federal Reserve Bank funds.

(b) *Principal Deposit—Single Vessel.* If a single Vessel is security for the Guarantees, the deposit of principal shall be calculated by subtracting from the aggregate principal amount of the Obligations sold, 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations.

(c) *Principal deposit—multiple Vessels.* If multiple Vessels are security for the Guarantees, with the Secretary's approval, the Obligor may calculate the aggregate deposit of principal amount in the Escrow Fund (i) by computing on an individual Vessel basis by prorating the proceeds of the sale of Obligations, within the meaning of the proviso in section 1108(a) of the Act, based on the ratio of the Vessel's

Actual Cost or Depreciated Actual Cost, to the total Actual Cost and Depreciated Actual Cost of all Vessels which are security for the Guarantees less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of deposit, by or for the account of the Obligor for the construction, reconstruction or reconditioning of the Vessel for which the deposit is being computed or (ii) by allocating portions of the proceeds (up to 75 or 87½ percent, whichever is applicable under section 1104(b) of the Act) from the sale of the Obligations to specific Vessels and computing the deposit based on the Actual Cost or Depreciated Actual Cost of such Vessels paid, as of the date of deposit, by or for the account of the Obligor. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations. The foregoing allocations are for the purpose of calculating the deposits only and are not applicable or controlling with respect to disbursements from the Escrow Fund.

(d) *Interest deposit.* Interest on the aggregate principal amount deposited pursuant to paragraphs (b) and (c) hereof, shall be computed at the same rate borne by the Obligations, for one interest payment period, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighted average of such interest rates. The calculation of the amount of interest to be deposited shall take into account the principal and interest, if any, remaining on deposit in the Escrow Fund.

(e) *Disbursements prior to Termination Date.* Unless the Guarantees shall become payable prior to the Termination Date (described in paragraph (h) of this section) of the Escrow Fund, the Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, and within a reasonable time after written request from the Obligor, make disbursements from the fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery or redelivery, and to the shipbuilder, the Obligor or to any other Person entitled thereto, with respect to costs included in Actual Cost. Also, the Secretary may disburse to the Obligor, upon request



made at least 10 business days prior to, and no later than 30 days after the date on which the payment of interest on the Obligations is due, any excess, as determined by the Secretary, of required interest on deposit in the Escrow Fund on the date of disbursement. However, no payment or reimbursement shall be made from the Escrow Fund to any Person until:

(1) The Construction Fund (described in § 298.34 of this part), where provided for in the Security Agreement, has been exhausted;

(2) At least 12½ or 25 percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel for which the disbursement is requested has been paid by or for the account of the Obligor from sources other than the proceeds of the Obligations, except that where the Obligor is required to pay in 25 percent of the Actual Cost or Depreciated Actual Cost, and demonstrates to the Secretary's satisfaction the ability to pay in such 25 percent, after the Obligor has paid the first 12½ percent of the Actual Cost or Depreciated Actual Cost, the Obligor may be permitted to withdraw moneys from the Escrow Fund, for payment of the next 37½ percent of such Actual Cost or Depreciated Actual Cost, and withdraw the remainder of the Escrow Fund moneys after paying in the next 12½ percent of Actual Cost or Depreciated Actual Cost; and

(3) The Secretary has approved the Actual Cost items and has determined that the amounts for which reimbursement is requested have been paid and that there has been satisfactory certification as to the percentage of completion of the Vessel or Vessels, at least equal to that amount of Actual Cost paid, except where the Secretary has specifically consented to an alternative procedure.

(f) *Where Guarantees become payable.* If, prior to the Termination Date of the Escrow Fund, the Guarantees shall become payable by the Secretary, all amounts in the Escrow Fund at such time (including interest and realized income which have not yet been paid to the Obligor) shall be paid into the Federal Ship Financing Fund, created by section 1102 of the Act, and be credited against any amounts due or to become due to the Secretary from the Obligor with respect to all Guarantees, and to the extent not so required, be paid to the Obligor.

(g) *Requisition of title, termination of construction contract or total loss of Vessel.* In the event of requisition of title to or seizure or forfeiture of the Vessel, termination of the construction contract (unless the Obligor and the Secretary elect to have the Vessel completed) or the construction-differential subsidy contract (where

applicable), or the actual or constructive total loss of the Vessel, all moneys remaining on deposit in the Escrow Fund may be disbursed by the Secretary for any of the following purposes:

(1) Redemption or payment of Obligations and accrued interest thereon to the date of redemption or payment, in accordance with the applicable provisions of the Documentation relating to such redemption or payment, where there is no existing default;

(2) Payment to the Obligor, if all outstanding Obligations are retired and paid other than by payment of the Guarantees, and all amounts payable to the Secretary and secured by the Mortgage have been paid; and

(3) Payment in accordance with the priorities set forth in § 298.41 of this part, if a default has occurred and if the Secretary shall have paid the Guarantees.

(h) *Disbursement upon Termination Date.* The Escrow Fund shall terminate on a date agreed upon by the Obligor and the Secretary as set forth in the Security Agreement (Termination Date). If on such Termination Date the full amount of Actual Cost of the Vessel has not been paid by or for the account of the Obligor, or is not then due and payable, the Obligor and the Secretary may extend the Termination Date by agreement. When the Secretary makes a final determination of Actual Cost at the written request of the Obligor, or at the instance of the Secretary if the Termination Date has occurred without such a request, the Termination Date shall be deemed to be the date of such final determination of Actual Cost. If payments under the Guarantees have not become due prior to the Termination Date, then on or immediately after said Termination Date, any balance in the Escrow Fund shall be disbursed by the Secretary in the following manner:

(1) Where the principal amount of the Obligations issued less the principal amount of Obligations which have been retired or paid on or before such Termination Date, and not availed of as a credit against any mandatory redemptions otherwise required to be made on or before such Termination Date, shall be in excess of 75 or 87½ percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel as finally determined by the Secretary as of the Termination Date, the Secretary shall pay such excess to the Indenture Trustee in accordance with the provisions of the Documentation relating to such payment. A written notice from the Secretary and the Obligor shall accompany such payment, stating the Termination Date and directing the Indenture Trustee to redeem an equal amount of Obligations;

(2) From the balance remaining after the deduction of the principal amount of the Obligations to be redeemed, an amount equal to interest accrued to the date fixed for redemption of the principal amount of Obligations to be redeemed shall be simultaneously paid from the Escrow Fund by the Secretary to the Indenture Trustee to be applied to the payment of interest to the date to be fixed for redemption. In the event the balance remaining in the Escrow Fund after giving effect to paragraph (1) is insufficient to pay the interest accrued to the date fixed for redemption, such balance shall be paid from the Escrow Fund to the Indenture Trustee and the Obligor shall simultaneously deposit with the Indenture Trustee an amount equal to the difference between the balance being paid to the Indenture Trustee from the Escrow Fund and the total amount required for the payment of accrued interest; and

(3) Any balance of the Escrow Fund shall be paid to the Obligor.

(i) *Investment and liquidation of the Escrow Fund.* The Secretary may invest and reinvest deposits to the Escrow Fund in securities which are obligations of the United States and with maturities such that sufficient cash will be reasonably available to the Escrow Fund as required to make periodic authorized disbursements. The Secretary shall deposit the Escrow Fund into a special Treasury Department account with instructions, pursuant to an agreement with the Obligor, for the investment, reinvestment and liquidation of the Escrow Fund.

(j) *Income on the Escrow Fund.* If the Guarantees shall not have become due, after receiving notice that the Treasury Department has deposited income earned on the Escrow Fund into the special account, the Secretary shall direct the payment of such income to the Obligor. Income shall include the excess of the cash received from the sale of securities or the payment of securities at maturity (less any losses from the sale of securities not made up by payments by the Obligor pursuant to provisions of the Security Agreement) over the cost thereof, and interest received with respect to the securities.

(k) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Escrow Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Escrow Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Escrow Fund.

#### § 298.34 Construction Fund.

(a) *Deposit.* Where the Security Agreement provides for an Escrow Fund deposit, usually a provision shall also be included therein for establishing Construction Fund deposits. Under the terms of this provision, at the time of each sale of Obligations the Obligor shall deposit with a Depository, in a special account subject to the joint control of the Obligor and the Secretary, cash equal to the principal amount of the Obligations issued at such time less the sum of (1) the aggregate principal amount then required to be in the Escrow Fund and (2) the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e) of this part) which the Secretary determines has been paid by or for the account of the Obligor. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery, and to the shipbuilder, the Obligor, or to any other Person entitled thereto with respect to costs included in Actual Cost. The Secretary shall not authorize any disbursement from the Construction Fund unless payments have been made by or for the account of the Obligor from sources other than the Obligations, in accordance with the requirements of subdivisions (2) and (3) of § 298.33(e).

(c) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Construction Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Construction Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Construction Fund.

#### § 298.35 Reserve Fund and Financial Agreement.

(a) *Purpose.* In order to provide further security to the Secretary and to insure payment of the interest and principal due on the Obligations, the Company shall be required to enter into a Title XI Reserve Fund and Financial Agreement (Agreement) at the first Closing at which Obligations are issued. The Secretary may waive or modify provisions of the Agreement

based on an evaluation of the aggregate security for the Guarantees.

(b) *Financial Covenants for Companies meeting primary financial requirements.* Covenants shall be imposed on the Company which is subject to compliance with the primary financial requirements at Closing, set forth in § 298.13(d), as follows:

(1) *Continuous covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Enter into a service, management or operating agreement with respect to a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of charter or contract,

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in new business activities not directly connected with marine operations or guarantee (or otherwise be liable for) debts of other Persons.

(iv) Pay any dividend except as may be permitted by (A) or (B) below. If the Company is party to an operating-differential subsidy contract, the payment of dividends is subject to the provisions of § 298.35(g).

(A) From retained earnings in an amount specified in (C) below providing that the year in which the dividend is paid there is no operating loss in the current fiscal year to the date of the payment of the dividend and (1) there was no operating loss in the immediate preceding three fiscal years, or (2) there was a one year operating loss during the immediate preceding three fiscal years and (i) such loss was not in the immediate preceding fiscal year, and (ii) there was positive net income for the three year period.

(B) If dividends are not payable under (A) above, a dividend can be paid in an amount equal to the total operating net income for the immediate preceding three fiscal year period provided that (1) there were no two successive years of losses, (2) in the year in which the dividend is paid there is no operating loss in such fiscal year to the date of payment of the dividend, and (3) the dividend paid would not exceed an amount specified in (C) below.

(C) Dividends may be paid from earnings of prior years in an aggregate amount equal to (1) 40 percent of the Company's total net income after tax for each of the prior years, less any dividends that were paid in such years; or (2) the aggregate of the Company's total net income after tax for such

prior years, providing that after the payment of such dividend, the Company's long term debt does not exceed its net worth. In computing net income extraordinary gains, such as gains from the sale of assets, etc., shall be excluded.

(2) *Additional Covenants which may become applicable.* If the Company shall at any time no longer satisfy the primary financial requirements, or such condition would occur after giving effect to any of the proposed transactions set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, covert capital into debt, make distributions, or pay any dividends, provided, however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by Section 298.35(g);

(ii) Make loans, advances, investments in or repayments of existing debts to Affiliates, stockholders, officers or directors;

(iii) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified by the Secretary in the Agreement;

(iv) Pay salaries in excess of amounts specified in the Agreement, pay subordinated indebtedness or make loans; or

(v) Invest in securities other than those that qualify as eligible investments under the Agreement.

(c) *Financial Covenants for Companies meeting the alternative financial requirements.* Covenants shall be imposed on the Company which is subject to the alternative financial requirements at Closing, set forth in § 298.13(e), as follows:

(1) *Continuous covenants.* So long as the Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions, prohibited by the Documentation, which actions include but are not limited to those of the following nature.

(i) Enter into a service, management or operating agreement for a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of Charter or Contract.



(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in any new business activities not directly connected with marine operations or guarantee (or otherwise become liable for) debts of other Persons;

(iv) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified for the Secretary in the Agreement;

(v) Make any loans or invest in any securities other than Eligible Investments for Title XI Reserve Fund; or

(vi) Pay any subordinated indebtedness other than in accordance with a subordination agreement approved by the Secretary.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the alternative financial requirement (after including the annual financial liability relating to the Obligations as a current liability in computing Working Capital), or such condition would occur after giving effect to any proposed transaction set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, make distributions, or pay any dividend, provided however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by Section 298.35(g);

(ii) Make loans, advances, investments or prepayments of existing debts to Affiliates, stockholders, officers or directors, or invest in the securities of any Affiliate; or

(iii) Pay salaries in excess of amounts specified in the Agreement.

(3) *Covenants where Company's financial condition improves to meet primary financial requirements.* Whenever the Company, based on a review of its financial position, determines that it meets the primary financial requirements set forth in § 298.13(d), it may inform the Secretary of this fact, and submit such financial statements and all additional information which the Secretary shall consider necessary to verify compliance with such financial requirements. With the consent of the Secretary, the Company may elect thereafter to be subject to covenants applicable to a Company which had satisfied the pri-

mary financial requirements at Closing.

(d) *Title XI Reserve Fund Net Income.* The Agreement shall provide that within 105 days after the end of its accounting year, the Company shall compute its net income attributable to the operation of one or more Vessels that were constructed, reconstructed, reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation utilizes a ratio expressed as a percentage, and applies this percentage to the Company's total net income after taxes. The numerator of the ratio shall be the total original capitalized cost of all Company Vessels (whether leased or owned) which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(e) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the primary financial requirements set forth in § 298.13(d), the Company shall make one or more deposits to a special joint depository account with the Secretary (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, shall be determined as follows:

(1) If the Company is the owner of the Vessel, an amount (pro rated for a period of less than a full year) that is equal to 10 percent of the Company's aggregate original equity investment in the Vessel or Vessels shall be deducted from Title XI Reserve Fund Net Income.

(2) Fifty percent of the Title XI Reserve Fund Net Income adjusted

where applicable, in accordance with subdivision (1) of this paragraph (e), shall be deposited into the Title XI Reserve Fund.

(3) There shall also be deposited any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the documentation to which the Company is a party.

(4) Irrespective of the Company's deposit requirement, as stated in preceding subdivisions (1)-(3) of this paragraph (e), the Company shall not be required to make any deposits into the Title XI Reserve Fund if any of the following events shall have occurred:

(i) The Company shall have discharged the Obligations and related Secretary's Note and shall have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations shall have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(f) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company shall enter into an agreement, satisfactory to the Secretary, providing that all such deposits of assets therein shall be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount shall be subject to the Secretary's prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

(g) Dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract. (Reserved)

#### § 298.36 Annual Guarantee Fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel, the Secretary

shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of a Vessel, the Guarantee Fee shall be imposed at an annual rate of not less than ¼ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt of the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The Guarantee Fee rate shall be subject to annual redetermination by the Secretary in accordance with the tests set forth in paragraphs (c) and (d) of this section, and the Secretary shall promptly give notice to the Obligor of a rate change for such annual period. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the credit source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel delivery.* For annual periods beginning prior to the delivery date of a Vessel being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the

annual Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel delivery.* For annual periods beginning on or after the Vessel delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt but less than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* The Initial Guarantee Fee covering the 12-month period commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The Guarantee Fee for each subsequent annual period must be paid to the Secretary at least 65 days prior to each anniversary of said payment. The Secretary shall refund the prepaid Guarantee Fee if the Guarantees shall have terminated, other than by reason of default, prior to the anniversary date.

(f) *Adjustment of Guarantee Fee.* If the Secretary at any time determines that the amount of any Guarantee

Fee should be adjusted for any reason, the Secretary shall promptly give written notice thereof, specifying the correct amount, the basis for computation thereof and the amount of the deficiency or excess. With respect to any deficiency, payment shall be made to the Secretary within 30 days after receipt of such notice. Any excess payment shall, except if any default has occurred and has not been cured, be refunded by the Secretary. If such refund is \$100 or less, it shall be applied as a credit against future payments unless a specific request for such refund is made to the Secretary.

(g) *Increase in Guarantee Fee due to Security Default.* If a Security Default, as described in § 298.40(c) of this part, shall have occurred and be continuing, the Secretary, after giving written notice to the Obligor of such Security Default, may increase the existing Guarantee Fee rate, if less than the maximum allowed under paragraph (a) of this section, to the maximum rate at the expiration of 60 days after receipt of notice by the Obligor, except if the Obligor shall have cured such Security Default or the Secretary shall have waived the Security Default during the 60-day period.

(h) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

(i) *Interest on late payment of Guarantee Fees.* The Secretary shall charge the Obligor interest computed at a rate equal to the prevailing rate on one-year Treasury Obligations as of December 31 of the preceding year (computed on the basis of a 365 day calendar year) with respect to the annual guarantee fee for each day following the 55th day specified in § 298.36(e) during which payment of



such fee has not been received by the Secretary.

#### § 298.37 Examination and audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel, as well as records of Affiliates and domestic agents connected with such Persons, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel with respect to which Guarantees or an insurance contract is in force. When a Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

#### Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

##### § 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment Default.* In the case of any default in the payment of principal or interest with respect to the Obligations, the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter.

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement

which is other than a Payment Default (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligor or agent of the Obligor of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand, make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

##### § 298.41 Remedies after default.

(a) *In General.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* After a default has occurred and is continuing and before making payment required under the Guarantees, the Secretary may take the Vessel and hold, lease, charter, operate or use the Vessel, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type; or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security Proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreements;

(2) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(3) All advances, including interest thereon, by the Secretary, pursuant to the Security Agreement and all rea-

sonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note; and

(6) To the extent of any collateralization by the Obligor of other debt due to the Secretary from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of:

(1) The aggregate of payments made pursuant to the Guarantees; and

(2) The actual expenses of collection of security proceeds, or a specific amount provided for in the Documentation.

##### § 298.42 Reporting requirements—financial statements.

The accounts of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970. The accountants performing such audits may be the regular auditors of the Company.

(a) *Reports of Company and other Persons.* Except as otherwise required by the Secretary, the Company shall file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with the Maritime Administration as specified in the Documentation. Included shall be the balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period, a statement of income for the period and any other statement that the Secretary shall consider necessary to accurately reflect the Company's financial condition and the results of its operations. By letter to the Company, the Secretary shall specify the form required for reporting and the number of copies to be submitted. The Secretary may, by notice to the Company, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects the Secretary's security for the Guarantees. The required financial report for the annual period shall be due within

105 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report shall be due within 105 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement. The annual and semiannual reports, respectively shall be in the form prescribed or approved by the Secretary. The annual report shall be certified by the public accountants after audit. Certification of the semiannual report by the accountants may be required by the Secretary. Where independent certification is not required, a responsible corporate officer shall attach a certification that such report is based on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(b) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the Vessels, the requirements for annual and semiannual accounting reports of the Obligor may be modified accordingly by the Secretary.

##### § 298.43 Applicability of the Regulations.

The regulations in this part shall be in effect as to all applications for commitments for Guarantees, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under Part 298 of this title (23 F.R. 384) as of the effective date hereof, but shall not affect any commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Guarantees, insurance contracts, commitment for Guarantees or Documentation.

#### Subpart F—Administration (Reserved)

(Section 304(b), 1109, Merchant Marine Act, 1936, as amended ((46) U.S.C. 1114(b), 1279(b)), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 F.R. 19707, July 23, 1973).)

Dated: December 22, 1978.

By Order of the Assistant Secretary for Maritime Affairs, Maritime Administration.

JAMES S. DAWSON, JR.,  
Secretary,  
Maritime Administration.

(FR Doc. 78-36248 Filed 12-28-78; 8:45 am)

[6712-01-M]

#### Title 47—Telecommunication

### CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

(FCC 78-854)

#### PART I—PRACTICE AND PROCEDURE

#### Combining FCC Forms 701 and 321 and Amending Section 1.534 of the Rules

##### PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In an effort to reduce paperwork, the FCC combines two application forms into one. FCC Form 701, "Application for Additional Time to Construct Radio Station;" and FCC Form 321, "Application for Construction Permit to Replace Expired Construction Permit," are combined into a new Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit."

DATE: Effective March 23, 1979, unless notice is given of a later effective date.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

#### FOR FURTHER INFORMATION CONTACT:

Lorraine B. Schnaebele, Broadcast Bureau, (202) 632-9660.

#### SUPPLEMENTARY INFORMATION:

In the Matter of combining FCC Forms 701 and 321 and amending § 1.534 of the Rules accordingly; order.

Adopted: December 12, 1978.

Released: December 20, 1978.

By the Commission:

1. In its continuing effort to reduce paperwork, the Commission is combining two of its application forms into one. FCC Forms 701, "Application for Additional Time to Construct Radio Station," and 321, "Application for Construction Permit to Replace Expired Permit," are combined into a single, new FCC Form 701.

2. Section 1.534 of our Rules is being amended accordingly.

3. We conclude that adoption of the form and the amendment of Section 1.534 will serve the public interest, convenience and necessity. The new form and the amendment impose no additional burdens and raise no issue upon which comments would serve any useful purpose. Accordingly, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Therefore, *it is ordered*, That, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the Commission's Rules and Regulations are amended as set forth in the attached Appendix A; and the new FCC Form 701 as set forth in Attachment B is adopted, subject to approval by the General Accounting Office. The effective date of each is March 23, 1979, unless notice is given of a later effective date.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS  
COMMISSION.  
WILLIAM J. TRICARICO,  
Secretary.

Attachment: Appendices A and B.

#### APPENDIX A

1. Section 1.534 is amended to read as follows:

Section 1.534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit." The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the Commission of sufficient reasons for filing within less than 30 days prior to the expiration date. Such applications will be granted upon a specific and detailed showing that the failure to complete was due to causes not under the control of the grantee, or upon a specific and detailed showing of other matters sufficient to justify the extension. If approved, such extensions will be limited to periods of not more than 6 months.

(b) Application for a construction permit to replace an expired construction permit shall be filed on FCC Form 701. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.



[6712-01-C]

## Proposed Form - SAMPLE Appendix B

FOR COMMISSION USE ONLY

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |              |                        |           |                              |                  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------|-----------|------------------------------|------------------|--|
| Form Approved<br>GAO No. B-180227 (RO )<br>United States of America<br><b>FEDERAL COMMUNICATIONS COMMISSION</b><br><b>APPLICATION FOR EXTENSION OF CONSTRUCTION PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>FILE NO.</b><br>1. Name of applicant (See instruction C)                                                                                                                                                                                                                                                                                                                                                                                                                                      |              |                        |           |                              |                  |  |
| <b>INSTRUCTIONS</b><br>A. This form is to be used in all cases when applying for additional time to construct a station or when applying for construction permit to replace expired permit. (See the following Parts of the Commission's Rules:<br><b>BROADCAST - Part 1</b><br><b>COMMON CARRIER - Parts 21, 23 and 25</b><br>B. Prepare and file two copies if for any class of broadcast service; if for common carrier service prepare and file one copy. File with the Federal Communications Commission, Washington, D.C. 20554 (Sign all copies)<br>C. The name of the applicant must be stated exactly as it appears on the construction permit/expired construction permit.<br>D. This application shall be personally signed by the applicant, if any applicant is an individual, by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.<br>E. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATIONS ARE NOT APPLICABLE SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION. | 2. Address (Number, street, city, state, zip code)<br><br>Telephone No. (Include Area Code)                                                                                                                                                                                                                                                                                                                                                                                                      |              |                        |           |                              |                  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 3. PURPOSE OF APPLICATION: (Check one)<br>a. Additional time to construct radio station <input type="checkbox"/><br>b. Construction permit to replace expired permit <input type="checkbox"/><br>(Not to be used under Part 21)<br>4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT<br><table border="1"> <tr> <td>File Number</td> <td>Call Letter</td> </tr> <tr> <td>Frequency</td> <td>Channel No. (Broadcast only)</td> </tr> <tr> <td colspan="2">Station Location</td> </tr> </table> | File Number  | Call Letter            | Frequency | Channel No. (Broadcast only) | Station Location |  |
| File Number                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Call Letter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |              |                        |           |                              |                  |  |
| Frequency                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Channel No. (Broadcast only)                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |              |                        |           |                              |                  |  |
| Station Location                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |              |                        |           |                              |                  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 5. EXTENT OF CONSTRUCTION<br>(a) Has equipment been delivered?<br><input type="checkbox"/> YES <input type="checkbox"/> NO<br>IF No, answer the following:<br>From whom ordered (If no order has been placed, so indicate)<br><table border="1"> <tr> <td>Date Ordered</td> <td>Date Delivery Promised</td> </tr> </table>                                                                                                                                                                       | Date Ordered | Date Delivery Promised |           |                              |                  |  |
| Date Ordered                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Date Delivery Promised                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |              |                        |           |                              |                  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | (b) Has installation commenced?<br><input type="checkbox"/> YES <input type="checkbox"/> NO<br>If Yes, submit as Exhibit a description of the extent of installation and the date installation commenced.<br>(c) Estimated date by which construction can be completed.                                                                                                                                                                                                                          |              |                        |           |                              |                  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 6. (a) If application is for extension of construction permit, submit as Exhibit reason(s) why construction has not been completed.<br>(b) If application is to replace an expired construction permit, submit as Exhibit the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).                                                        |              |                        |           |                              |                  |  |

(This form supersedes previous editions of FCC Form 701 and 321.)

FCC Form 701

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

7. Are the representations contained in the application for construction permit still true and correct?

☐ YES ☐ NO

If No, give particulars in Exhibit

THE APPLICANT hereby waives any claim to the use of any particular frequency or of ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

## CERTIFICATION

I certify that the statements in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U. S. CODE, TITLE 18, SECTION 1001.

(Name of Applicant)

BY \_\_\_\_\_  
(Signature)

TITLE \_\_\_\_\_

## FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended.

The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with the public interest.

The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, dismissed, or designated for hearing.

If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P. L. 93-579, DECEMBER 31, 1974, 5 U. S. C. 552a (e) (3).

EXHIBITS furnished as required by this form:

| Exhibit No. | Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which) | Official Title |
|-------------|--------------------------------------------------------------------------------------------------------|----------------|
|             |                                                                                                        |                |

[FR Doc. 78-36330 Filed 12-28-78; 8:45 am]

FCC Form 701 (back)

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978



[3510-22-M]

## Title 50—Wildlife and Fisheries

## CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

## PART 611—FOREIGN FISHING

## 1978 Quarterly Reports

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final regulation.

SUMMARY: This regulation provides instructions for submission of quarterly reports covering fishing operations conducted in 1978 by foreign vessels in the Northwest Atlantic Ocean, under the authority of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*, as amended).

DATES: This regulation is effective immediately. All quarterly reports for 1978 must be submitted by April 1, 1979.

## FOR FURTHER INFORMATION CONTACT:

Dr. Eugene Heyerdahl, Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543; telephone (617) 548-5123.

SUPPLEMENTARY INFORMATION: The proposed foreign fishing regulations for 1978, which were published September 9, 1977 (42 FR 45551), contained a requirement for the submission of quarterly reports on foreign fishing activities in the Northwest Atlantic Ocean (§ 611.50(f)(4)). That provision was virtually identical to the 1977 requirement (paragraph (f)(3) for sections 611.50-611.54, 42 FR 8811), except that the 1978 data were to be recorded in weekly segments, while the 1977 data had been recorded in bi-weekly segments.

When the final foreign fishing regulations for 1978 were published (42 FR 60681, November 28, 1977), the quarterly report provision, § 611.50(d)(2), was reserved. The National Marine Fisheries Service was developing the more elaborate reporting requirements which will apply to foreign fishing vessels in 1979 (see 1979 foreign fishing regulations, § 611.50(e)(2), 43 FR 59291, December 19, 1978). Because these provisions were not completed until late in 1978, they will not be applied to reports on fishing activities in 1978. Instead, the regulation proposed for 1978 is adopted as final. Reports for all four quarters of 1978 must be

## RULES AND REGULATIONS

submitted by April 1, 1979, to: Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

The Assistant Administrator for Fisheries has determined that this regulation does not constitute a major Federal action requiring the preparation of an environmental impact statement, nor does it require a regulatory impact analysis under Executive Order 12044. Because the regulation must take effect before the end of 1978, the Assistant Administrator has determined that any further comment period is unnecessary and against the public interest.

Signed at Washington, D.C., this 22nd day of December, 1978.

(16 U.S.C. 1801 *et seq.*)

JACK W. GEHRINGER,  
Deputy Assistant Administrator  
for Fisheries, National Marine  
Fisheries Service.

§ 611.50(d)(2). Quarterly report (1978 foreign fishing regulations) is adopted as follows:

- (d) . . . . .
- (2) *Quarterly report.* A quarterly report shall be submitted by the designated representative of each foreign nation. Reports must be submitted no later than April 1, 1979. The quarterly report shall contain catch and effort statistics for all species and gear types for weekly time periods reflecting 0°30' square areas on a vessel by vessel basis. Reports shall be submitted using 0°30' square areas on either Statland 21B Forms, magnetic tape, computer cards, or printouts.

(FR Doc. 78-36218 Filed 12-28-78; 8:45 am)

[4310-55-M]

## CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

## PART 33—SPORT FISHING

## Opening of DeSoto National Wildlife Refuge, Iowa and Nebraska, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to sport fishing of DeSoto National Wildlife Refuge is compatible with the objec-

tives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1979 through February 28, 1979 and April 15, 1979 through September 30, 1979.

## FOR FURTHER INFORMATION CONTACT:

George E. Gage, Refuge Manager, DeSoto NWR, R-1, Box 114, Missouri Valley, Iowa 51555, telephone AC 712-642-4121.

## SUPPLEMENTARY INFORMATION:

## § 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the DeSoto National Wildlife Refuge, Iowa and Nebraska, only on areas designated by signs and maps as being open to fishing. These areas, comprising 800 acres, are delineated on maps available at the refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, Suite 106, Rockcreek Office Building, 2701 Rockcreek Parkway, North Kansas City, Missouri 64116. Sport fishing shall be in accordance with all applicable Iowa or Nebraska regulations, depending upon which state the person is properly licensed for, and subject to the following special regulations:

1. Area open to ice fishing during daylight hours only from January 1, 1979 through February 28, 1979 provided that ice conditions are safe enough to permit this activity.
2. Area open to sport fishing 6:00 a.m. to 10:00 p.m., from April 15, 1979 through September 30, 1979. Entrance not permitted after 9:00 p.m.
3. Trot or throw lines and float lines are not permitted.
4. Archery fishing and spear fishing is permitted from May 1, 1979, through June 15, 1979. Only the following fishes can be taken with bow and arrow or spear: Bigmouth buffalo (*Ictiobus cyprinellus*), Smallmouth buffalo (*Ictiobus bubalus*), Carp (*Cyprinus carpio*), Longnose Gar (*Lepisosteus osseus*), and Shortnose Gar (*Lepisosteus platostomus*).
5. Taking or attempting to take bait by digging or seining is not permitted.
6. Fishing with more than two lines and with more than two hooks on each line is not permitted.
7. Motor or wind driven conveyances are not permitted on the lake from January 1, 1979 through February 28, 1979.
8. The use of boats, with or without motors, is permitted from April 15, 1979 through September 30, 1979.
9. From September 15, 1979 through September 30, 1979, only boats with-

out motors or boats with motors of 25 horsepower or less are permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: December 12, 1978.

GEORGE E. GAGE,  
Refuge Manager.

(FR Doc. 78-36337 Filed 12-28-78; 8:45 am)



# proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6325-01-M]

## CIVIL SERVICE COMMISSION

[5 CFR Part 890]

### FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Effective Dates; Birth or Acquisition of a Child

AGENCY: Civil Service Commission.

ACTION: Proposed rulemaking.

**SUMMARY:** An enrollee of the Federal Employees Health Benefits Program who is enrolled for self only and who has a baby, or acquires a child as a new family member in some other manner, may change to a family enrollment and provide coverage for the child after the birth or acquisition occurs. However, under current regulations, the earliest such a change can become effective is the first day of the first pay period which begins after the registration to change enrollment is received in the employing office. As a result, medical expenses of the child incurred between birth or acquisition and the effective date of the change must be borne entirely by the employee or annuitant. The proposed amendment would permit a change to family coverage made in conjunction with the birth or acquisition of a child to become effective on the first day of the pay period in which the child is born or acquired, or, if not in pay status at that time, the first day of the pay period in which the enrollee returns to pay status.

**DATE:** Comments must be received on or before February 27, 1979.

**ADDRESS:** Comments should be directed to Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, Civil Service Commission, 1900 E. St., NW., Washington, DC 20415.

#### FOR FURTHER INFORMATION CONTACT:

Edward G. Borchers, Bureau of Retirement, Insurance, and Occupational Health, Office of Policy Development and Technical Services, Room 4334, 1900 E Street NW., Washington, D.C. 20415, 202-632-4684.

It is proposed to amend 5 CFR 890.306 by redesignating the present paragraph (d) as paragraph (e) and

adding a new paragraph (d) as set out below:

§ 890.306 Effective Dates.

(d) *Birth or addition of a child.* The effective date of a change in enrollment under § 890.301(e) made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, is the first day of the pay period in which the child is born or becomes an eligible family member. However, if the enrollee is not in a pay or annuity status during that pay period, the enrollment shall not become effective until the first day of the first pay period in which the enrollee returns to pay or annuity status.

(e) *Generally.* . . .

(5 U.S.C. 8913)

UNITED STATES CIVIL SERVICE COMMISSION  
JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-35957 Filed 12-28-78; 8:45 am]

[3410-34-M]

## DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 92]

### IMPORTATION OF CATTLE EXPOSED TO SPLENETIC, SOUTHERN OR TICK FEVER OR FEVER TICKS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

**SUMMARY:** This document will serve to give advance notice to the Department's intent to consider amending the import regulations which provide for the importation of cattle which have been exposed to splenic, southern or tick fever or have been infested with or exposed to fever ticks within the 60 days preceding their importation into the State of Texas from Mexico. This action is believed to be needed to provide additional protection to livestock of the United States against the introduction and spread of tick fever and cattle fever ticks. The effect of this action is to notify the public of the Department's intent to

review the importation of such cattle from Mexico.

**DATE:** Comments on or before March 29, 1979.

**ADDRESS:** Comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 734, Hyattsville, Maryland 20782.

#### FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, Maryland 20782, (301) 436-8170.

**SUPPLEMENTARY INFORMATION:** The Act of August 30, 1890, as amended (21 U.S.C. 104), authorizes the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom.

The regulations (9 CFR 92.35(a)) provide that cattle which have been exposed to splenic, southern or tick fever, or which have been infested with or exposed to fever ticks may be imported into the State of Texas from Mexico, except into areas quarantined because of said disease or tick infestation provided certain specified conditions are met. Such cattle must be freed of ticks before importation and are prohibited importation into any State other than Texas. However, if the cattle were exposed to splenic, southern or tick fever or were infested with or exposed to ticks within 60 days of their importation, there appears to be a significant likelihood that such cattle may be carrying splenic, southern or tick fever. This is believed to impose an undue threat of introduction and spread of disease among livestock of the United States. Further, permitting the importation of such cattle is believed to diminish the incentive for controlling and eradicating ticks in areas of Northern Mexico adjacent to the United States-Mexico international boundary and contributes to the continuing spread of splenic, southern or tick fever into Texas from Mexico. Additionally, it creates a heavy financial burden on the cattle industry of the United States and on State and Federal Governments because of funds required to conduct tick eradication activities.

In view of these facts a determination has been made by the Department that the practice of importing cattle into the State of Texas from Mexico which have been exposed to splenic, southern or tick fever, or which have been infected with or exposed to fever ticks within the 60 days preceding their movement to the port of entry should be reviewed.

Therefore, by means of this document the Department gives advance notice of its intent to propose an amendment to the regulations at a future appropriate date which would delete the provisions contained in the regulations (9 CFR 92.35(a)) which provide for the importation of such cattle from Mexico into the State of Texas.

A target date of January 1, 1980, has been set by the Department for completion of the rulemaking process.

Done at Washington, D.C. this 21st day of December 1978.

PIERRE A. CHALOUX,  
Deputy Administrator,  
Veterinary Services.

[FR Doc. 78-36042 Filed 12-28-78; 8:45 am]

[6450-01-M]

## DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-18]

### PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

Changed Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Change in Hearing Location.

**SUMMARY:** On November 2, 1978 (43 FR 52186, November 8, 1978) the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearing concerning production incentives for marginal properties.

**DATE:** Public hearing—January 9, 1979—Austin, Texas.

**ADDRESS:** The public hearing on this proposal scheduled for Austin, Texas, on January 9, 1979 will take place at the Lone Star Room, Austin Marriott, 6121 I-35 North at U.S. Highway 290. This is a change from the location announced in the notice which was the Federal Building Room 5777, 300 East 8th Street, Austin, Texas.

#### FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette, 202-254-5201.

Issued in Washington, D.C., December 22, 1978.

DOUGLAS G. ROBINSON,  
Assistant Administrator for Regulations and Emergency Planning,  
Economic Regulatory Administration.

[FR Doc. 78-36380 Filed 12-26-78; 2:48 pm]

[6450-01-M]

[10 CFR Part 211]

[Docket No. ERA-R-78-3]

### PROPOSED AMENDMENTS TO ENTITLEMENTS PROGRAM TO REDUCE THE LEVEL OF BENEFITS RECEIVED UNDER THE SMALL REFINER MIA

Change of Hearing Location

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of change of hearing location.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that the location of the January 9, 1979 San Francisco hearing as set forth in its November 14 notice of proposed rulemaking and public hearing (43 FR 54632, November 22, 1978) has been changed to the following location: San Francisco Hotel, 1231 Market Street, Stevenson Room, San Francisco, Ca. 94103.

#### FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2214, Washington, D.C. 20461, (202) 254-5201.

Issued in Washington, D.C. on December 21, 1978.

DOUGLAS G. ROBINSON,  
Assistant Administrator, Regulations & Emergency Planning,  
Economic Regulatory Administration.

[FR Doc. 78-36283 Filed 12-26-78; 2:33 pm]

[6210-01-M]

## FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0193]

### ELECTRONIC FUND TRANSFERS

Scope and Purpose, Exempted Transfers, Issuance of Access Devices, Conditions of Liability of Consumer for Unauthorized Transfers, and Definitions and Rules of Construction

AGENCY: Board of Governors of the Federal System.

ACTION: Proposed rule.

**SUMMARY:** The Board is publishing for comment regulations to implement two sections of the Electronic Fund Transfer Act which become effective on February 8, 1979. Section 911 of the Act relates to issuance of cards or other means of access and § 909 to consumer liability for unauthorized transfers. The Board is also proposing certain model disclosure clauses and is publishing for comment two tentative outlines of the complete regulation. Finally, the Board is also publishing for comment an economic impact analysis, as required by § 904 of the Act.

**DATE:** Comments must be received on or before January 29, 1979.

**ADDRESS:** Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should refer to docket number R-0193.

#### FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412). Regarding the economic impact analysis: Cynthia A. Glassman, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2611).

**SUPPLEMENTARY INFORMATION:** (1) *Introduction; General Matters.* The Board is publishing for comment five sections of Regulation E<sup>1</sup> to implement certain provisions of the Electronic Fund Transfer Act (Title XX, Pub. L. 95-630), enacted on November 10, 1978. The Act, which requires the Board to issue implementing regulations, will provide the following rights and responsibilities, among others, to participants in electronic fund transfers: disclosure to consumers of the terms and conditions of EFT services, right to documentation of transfers and to periodic account statements, establishment of error resolution procedures, limits on consumer liability for unauthorized transfers, restrictions on unsolicited issuance of EFT cards, and the liability of financial institutions in certain instances for failure to make transfers or to stop payment of preauthorized transfers.

The effective date of most of the Act is May 10, 1980. Sections 909 and 911, however, will become effective 90 days after enactment, on February 8, 1979. These two sections establish, respectively, limits on consumer liability for unauthorized transfers which occur

<sup>1</sup>Please note that the original Regulation E, Purchase of Warrants, was rescinded as of November 9, 1978 (43 FR 53708, Friday, November 17, 1978).



after loss, theft or unauthorized use of an EFT card, code or other means of access and a partial ban on the unsolicited issuance of EFT access devices.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other Federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff have met with staff members from the enforcement agencies.

Federal savings and loan associations should note that they will be subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be promptly amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board, to the extent practicable, to demonstrate that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board has prepared a preliminary statement on the foregoing issues, which is published in section (4) herein, and solicits comment on the statement. The statement and the proposed regulation have been transmitted to Congress, as required by § 904(a)(4).

The Act (in § 904(b)) requires the Board to issue model disclosures clauses, written in readily understandable language, for optional use by financial institutions to facilitate compliance with the disclosure requirements of § 905 and to aid consumer understanding of the rights and responsibilities provided by the Act. Although § 905 does not take effect until May, 1980, § 911(b)(2) requires disclosures comparable to those required by § 905, and § 911 becomes effective in February, 1979. Thus, it is appropriate for the Board to propose model clauses for these disclosures now, along with the regulations implementing § 911. In addition, § 911(b)(3) requires that the Board provide a clear disclosure for use by issuers to inform consumers that an unsolicited access device is not validated and how the consumer may dispose of the device if it is not wanted. The Board is proposing model

clauses for the disclosures that would be required by the regulation to implement § 911(b)(2) on an interim basis, and for the disclosure required by § 911(b)(3) of the Act and the corresponding provision in the regulation. The model clauses are discussed in detail in section (3) of this material.

Section 904(c) permits the Board to modify the requirements of the Act as they affect small financial institutions upon a determination that such modifications are necessary to alleviate any undue compliance burden upon such institutions. The Board solicits comment on whether any such modifications in the proposed sections are necessary. Comments on this issue should attempt to demonstrate that compliance with the proposed regulation would impose undue cost, administrative or other burdens upon small financial institutions.

Section 904(d) requires the Board to assure that the requirements of the Act are imposed upon persons (other than financial institutions holding a consumer's account) that are offering consumers electronic fund transfer services. The Board solicits information regarding the offering of such services by non-financial institutions, a description of the services, and whether specific provision should be made in the regulation to insure that such persons are subject to the Act's requirements.

The Board also proposes to reassign five Public Information Letters issued under Regulation Z (445, 520, 528, 921 and 1082) because they conflict with the proposed regulation. The Board solicits comment on whether these letters or any other letters should be rescinded.

The Board is publishing two tentative outlines of the entire regulation that reflect somewhat different approaches to the regulation's structure. The Board solicits comment on which of the two outlines represents the more functional structure for the regulation.

(2) *Regulatory Provisions.* Section 205.1—*Scope and Purpose.* This section is an introductory statement of the regulation's requirements and is intended to provide consumers, financial institutions and issuers with general information about the Act and regulation.

Section 205.2—*Exempted Transfers.* The Act does not contain a separate section devoted to exemptions. However, § 903(6), which defines "electronic fund transfer," excludes certain services from the Act's coverage. For clarity, the proposed regulation sets forth these exemptions in this separate, freestanding section.

Briefly, the transfers that would be exempted are: (a) electronic check, draft or similar paper instrument au-

thorization services that do not directly debit or credit a consumer's account, (b) transfers for consumers by Fedwire, Bankwire or similar wire transfer services, (c) purchases or sales of securities or commodities by brokers registered with or regulated by the Securities and Exchange Commission, (d) automatic transfers of funds from savings to demand deposit accounts, as permitted by recent amendment of 12 CFR § 217.5(c)(2) and (3) (Regulation Q) and 12 CFR § 329.5(c)(2) and (3), and (e) transfers initiated by telephone that are not made pursuant to an arrangement between the consumer and the financial institution. The language in which these five types of exemptions are described is virtually identical to the corresponding language in the Act.

The Board solicits the opinions of commenters as to whether other transfers, such as those involving mutual funds or pension accounts, should also be exempted and, if so, for what reasons. Also, in connection with exemption (c) in particular, comments are invited on whether transactions within the jurisdiction of the Commodities Futures Trading Commission should also be exempted. With reference to exemption (d), comment is solicited on whether automatic transfers among other types of accounts within one institution should also be entitled to the exemption.

Section 205.3—*Issuance of Access Devices.* Section 205.3(a) implements § 911(a) of the Act, which prohibits the unsolicited issuance of validated EFT cards. The statutory and regulatory provisions are essentially identical, except that the regulation is structured differently for clarity, the term "access device" has been substituted for "card, code, or other means of access," and the regulation provides that a request or application for an access device may be oral or written, as presently permitted by Regulation Z with respect to credit cards. The Board solicits comment on whether such latitude should be permitted.

The public is asked to address the following alternatives relating to jointly-held accounts: (1) Whether the regulation should permit issuance of a separate access device to each party on the account when only one has applied for a device, or (2) whether the regulation should require that all account holders must request or apply for an access device before one can be issued. As the prohibition on unsolicited issuance of access devices is designed in part to protect against unauthorized transfers initiated without the consumer's knowledge, some restrictions on requests by an account holder without a similar request from other holders may be appropriate, and the Board solicits comments on which of the two

alternatives listed above (or other alternatives) is most beneficial to consumers and issuers.

Section 205.3(b) implements § 911(b) of the Act. It would permit the unsolicited issuance of an access device if four conditions are satisfied. First, the unsolicited device cannot be validated, that is, capable of being used by the consumer to initiate an electronic fund transfer. Second, the issuer must include a written disclosure of the consumer's rights and liabilities which will apply if the device is validated. Third, the issuer must also disclose that the device is not validated and how a consumer not wishing validation can dispose of the device. Fourth, the access device may be validated only upon request of the consumer and after verification of the consumer's identity. Section 205.3(b)(1) sets forth these four conditions and is almost identical to § 911(b), except that the regulation makes clear that validation of an unsolicited device can occur only in response to a request or application for validation, and not, for example, in response to a blanket authorization in an earlier application to open an ordinary checking account; however, the regulation specifies that the request may be oral or written.

Section 205.3(b)(2) specifies methods by which a consumer's identity must be verified before an unsolicited access device can be validated. It should be noted that such verification is required, under § 205.3(b)(1)(iv), only for devices that have been distributed on an unsolicited basis. The Act contains no provision specifying verification methods. However, the Board believes that issuers, in order to protect themselves from liability, should exercise care in verifying a consumer's identity before validation of an access device, and the Senate committee report indicated the committee's expectation that the Board would assure that adequate verification procedures be used by issuers (S. Rep. No. 95-915, 95th Cong., 2nd Sess. 16 (1978)). Therefore, § 205.3(b)(2) would require that the consumer's identity be verified by comparison of the consumer's signature with the issuer's account records or with another signed instrument, or by photograph, fingerprint or personal visit.

The Board solicits comment on whether the proposal on verification would unduly limit the ability of card issuers to issue unsolicited access devices or the ability of consumers to have such devices validated. In particular, since new methods of identification, such as voiceprint, may become feasible, commenters should specify what additional methods should be added, or how the proposal should otherwise be changed, so as to permit continuing innovation in this area.

Comment is also solicited on whether the proposed verification requirements would provide an adequate safeguard to either consumers or issuers.

Section 205.3(b)(3) is drawn from § 911(c); it would provide that an access device is to be considered validated when the issuer takes the necessary steps to permit the consumer to initiate an electronic fund transfer. The statute and the regulation differ in that the latter emphasizes that validation is tied to some affirmative action or actions by the issuer.

The Board is aware that issuers currently use different methods of validation, and is mindful that specifying only certain means of validation may unnecessarily limit development of other methods. The Board therefore solicits comment on the need for specifying means of validation and the benefits that would be gained were the regulation to do so.

To forestall confusion, § 205.3(c) explains what the Board believes was the Congressional intent regarding the relationship between the Truth in Lending Act and the Electronic Fund Transfer Act. Truth in Lending and Regulation Z prohibit the unsolicited issuance of credit cards. Section 205.3(c) provides that the EFT Act governs the issuance of access devices and the addition of an EFT feature to an accepted credit card and that Truth in Lending governs the issuance of credit cards, combined access devices/credit cards and the addition of a credit feature to an accepted access device. There is no comparable provision in the EFT Act itself.

Section 911(b)(2) of the Act requires that any distribution of unsolicited access devices be accompanied by "a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated." Section 905 of the Act does not become effective until May, 1980, and many of the disclosures it mandates relate to substantive rights that consumers will not have until that time (e.g., right to documentation and error resolution procedures). The Board feels a significant consumer protection would be lost if some initial disclosures were not given when unsolicited devices are distributed. For that reason, § 205.3(d) would require issuers, until May 10, 1980, to give the disclosures required by § 905 when distributing unsolicited devices. These disclosures would cover the following areas:

(a) The consumer's liability for unauthorized electronic fund transfers and the address and telephone number of the person to be notified in the event of loss or theft of the access device or possible unauthorized transfer.

(b) The type and nature of transfers which the consumer may initiate, the

charges imposed for such transfers, and any limits on the frequency or amount of the transfers that the consumers may make.

(c) The circumstances under which a financial institution, if one is involved, will disclose account information to third parties.

Model clauses for these disclosures are also proposed.

In addition, the regulation would require that the issuer disclose whether or not the following rights and procedures are available to the consumer:

(a) The consumer's right to stop payment of preauthorized transfers and how to do so.

(b) The consumer's right to receive documentation of transfers.

(c) A summary of the issuer's or institution's error resolution procedures.

(d) The issuer's or institution's liability to the consumer for failure to make transfers.

It should be emphasized that issuers and institutions need not comply with the rights and procedures disclosed under § 205.3(d)(6) through (9) as they are set forth in the Act until May 10, 1980. If they do provide them, they may be structured in any manner.

Model clauses are not proposed for the last four disclosures in § 205.3(d) because there are no uniform requirements that would make such clauses feasible.

Section 205.4—*Liability for Unauthorized Transfers.* This section would implement § 909 of the Act, which determines a consumer's liability for unauthorized transfers. A consumer cannot be held liable for any unauthorized electronic transfer unless the access device used for such transfer was an accepted device (as defined by § 205.12(a)) and the account issuer has provided a means of identifying the authorized user.

The Act specifies the conditions for a consumer's liability for "an unauthorized electronic fund transfer" (emphasis added). The Board believes that the intent of Congress with respect to such liability was identical to that contained in the unauthorized use provision in the Truth in Lending Act (§ 133(a)), that is, the consumer's liability is determined by reference to "unauthorized use" of the credit card, whether or not multiple transactions have occurred. To implement the statutory language without change would result in at least \$50 liability being imposed on a consumer for each unauthorized transfer from a single loss or theft. Therefore, the proposed regulation (§ 205.4(a)) states that a consumer's liability would be determined by reference to any single unauthorized transfer or series of transfers that occur following loss, theft or other unauthorized use. For example, a consumer whose access device was stolen and whose account was accessed six times by the thief (and who notified the financial institution within 2 busi-



ness days after learning of the theft) would be liable for \$50, rather than \$300. The Board solicits comment on this construction of the statute.

A consumer's liability for unauthorized transfers would be determined in the following ways under § 205.4(b):

(a) If notification occurs within 2 business days after the consumer learns of the loss, theft or possible unauthorized use, the consumer's liability would be limited to the lesser of \$50 or the amount of the unauthorized transfers occurring prior to notice.

(b) If notification does not occur within 2 business days after the consumer learns of the loss, theft or possible unauthorized transfer, and the institution establishes that losses which occurred after the close of the 2 business days could have been prevented had the consumer notified it, the consumer's liability would be limited to the sum of (i) the amount of actual losses that occurred before the close of the 2 business days (subject to a limit of \$50), and (ii) the amount of actual losses that occurred after the 2 business-day period and before notice. However, overall liability would be subject to a \$500 limit. If the institution could not establish that subsequent losses could have been prevented by notice, liability would be determined in accordance with (a) above.

(c) If notification does not occur within 60 days of transmittal of a periodic statement that reflects an authorized transfer, the consumer's liability may be unlimited as to any unauthorized transfers that the institution can establish could have been prevented by notice.

The regulation would provide, as does the Act, that these time periods shall be extended in the presence of extenuating circumstances, such as hospitalization or extended travel.

Section 205.4(c) implements a portion of § 909(a)(2) of the Act and provides that notice to the financial institution of loss, theft or possible unauthorized transfer may be given by the consumer by any means that are reasonably necessary to provide the institution with the pertinent information, whether or not any particular employee or agent of the institution receives the information. The Board proposes to modify the statutory provision by stating that notice may be oral or in writing.

The Board invites comment on whether an institution can require that a consumer notify a particular person or office in order to give adequate notice of loss, theft or possible unauthorized transfer or whether any reasonable, necessary steps taken by the consumer to notify the institution constitute adequate notice.

Section 205.4(d) would implement §§ 909 (c) and (d) of the Act. Section 909(c) provides that the consumer's liability for unauthorized transfers is to be determined solely in accordance with the EFT Act (rather than the Truth in Lending Act) when an electronic fund transfer also involves an extension of credit under an overdraft agreement between a consumer and a

financial institution. This provision would be implemented in § 205.4(d)(1)(ii). It would provide that an agreement to extend credit if the consumer's account would otherwise fall below a specified minimum balance would be treated in the same way as an overdraft agreement; that is, an electronic fund transfer also involving an extension of credit under either type of agreement would be covered by the EFT Act. Section 205.4(d)(1)(i) would clarify that liability for an unauthorized electronic fund transfer initiated by means of an access device that is also a credit card, without any accompanying extension of credit (for example, a debit of a checking account), would be determined by the EFT Act.

Section 909(d) permits a consumer and a financial institution to agree to lesser liability for unauthorized transfers than that provided by the Act. This section is implemented by § 205.4(d)(3) of the proposed regulation.

The EFT Act does not specify which law applies (EFT or Truth in Lending) with respect to liability in the case where credit is extended, but no electronic fund transfer occurs, by means of a card or other device that has both EFT and credit card features. For purposes of this proposal, the Board takes the position, in § 205.4(d)(2), that liability in such a case would be determined under Truth in Lending and Regulation Z. The Board solicits comment on the feasibility and desirability of alternatives. For example, if the EFT Act could be said to apply in these circumstances, then uniform liability limits would operate in virtually all transactions on accounts with both EFT and credit features. Less confusing disclosures would be possible, benefiting consumers, creditors and financial institutions; on the other hand, potential consumer liability would be greater in some transactions.

Section 205.12—Definitions and Rules of Construction. The Board proposes to implement, with some modifications, all but three of the statutory definitions contained in the Act. The definition of "preauthorized electronic fund transfer" (§ 903(9) of the Act) will be implemented later. The definitions of "Board" (§ 903(3)) and "State" (§ 903(10)) do not, in the Board's opinion, need to be implemented in the regulation. If commenters believe additional definitions should be provided or proposed definitions changed, they should explain the reasons for such beliefs, and, where appropriate, suggest regulatory language.

(a) "Access device" and "accepted access device." The definition of the first term does not appear in the Act. The words "card" and "code" are not used as defined terms because EFT

systems do not necessarily employ them and use of those terms in the regulation might impede technological innovation. The definition has been developed to permit convenient reference in the regulation to any of a number of different possible means of access to accounts for EFT purposes. The terms used are found elsewhere in the Act. The Board solicits comment on whether other means of electronic access to accounts should be specified in the definition.

The related definition is virtually identical to the corresponding definition in the Act. Minor changes would be made to comport with other definitions. The word "person" in the Act would be changed to "consumer" in the regulation.

(b) "Account." This definition is unchanged from that in the Act, except for deletion of a reference to the Truth in Lending Act made unnecessary by addition of the definition of "open end credit plan." The Board is aware that certain asset accounts, such as mutual funds and profit-sharing and pension accounts, can be accessed by consumers through electronic means, and believes that the definition encompasses such accounts. The Board solicits comment on whether such accounts should be exempted, and, if commenters so believe, is interested in specific reasons why such exemptions should be granted. The definition excludes occasional or incidental credit balances in an open end credit plan; comment is invited on whether all such occasional or incidental balances, whether or not in an open end credit plan, should be excluded.

(c) "Act." This definition does not appear in the Act. It is added to the regulation for purposes of convenient reference.

(d) "Business day." This definition is proposed in virtually the same form as in the Act. However, since the definition relates to both issuers and financial institutions, a day on which the offices of an issuer are open, as well as a day on which the offices of an institution are open, would be a business day. The Board is particularly interested in receiving comment on whether the regulation should provide more detail regarding what constitutes being open to the public for carrying on substantially all of a financial institution's or issuer's business functions. Comment should also address whether the regulation should establish a uniform rule as to what constitutes a business day, analogous to the rule set forth in § 226.9 of Regulation Z for rescission purposes (Monday through Saturday, exclusive of Federal holidays).

(e) "Consumer." This is the same definition as in the Act.

(g) "Electronic fund transfer" and (h) "Electronic terminal." These definitions are proposed as they appear in the Act, except that the exceptions contained in the Act's definition of "electronic fund transfer" are not set forth in the regulation as part of the definition, but instead accorded separate treatment in § 205.2.

The Board is aware of EFT systems that are to some extent paper-based, i.e., transfers are initiated by a debit card, which imprints a paper instrument. That paper instrument (which may later be truncated) is the means by which payment is effected. The Board solicits comment on whether transfers under such systems are included in the definition of "electronic fund transfer."

(j) "Financial institution." The definition is unchanged from the Act, except that it also includes agents of the institutions described. The Board solicits comment on whether other persons that are subject to the definition of "financial institution" should be specified in the definition.

(k) "Issuer." This definition is not found in the Act. It is added in order to refer to all those that issue access devices and their agents and are subject to the provisions regarding issuance of such devices. Note that § 911 of the Act refers to persons that issue cards rather than financial institutions.

(m) "Unauthorized electronic fund transfer." This definition is virtually unchanged from the Act.

A number of definitions that are similar to definitions in the Truth in Lending Act and Regulation Z would be added to the regulation to facilitate reference to these terms. They are the following: (f) "Credit card," (l) "Extension of credit," and (i) "Open end credit plan." The term "extension of credit" is drawn from the definitions of "credit" and "creditor" in Regulation Z.

(3) *Model Clauses.* The Board is required by § 904(b) of the Act to issue model clauses for the disclosures required by § 905. While § 905 does not take effect until May 1980, the § 905 disclosures are required by § 911(b)(2), which becomes effective on February 8, 1979. In addition, § 911(b)(3), which also becomes effective in February, requires the Board to provide by regulation for another disclosure. Section 911(b)(2) is implemented by § 205.3(b)(1)(ii) and, for the interim period between February 1979, and May 1980, by § 205.3(d) of the proposed regulation. Section 911(b)(3) is implemented by § 205.3(b)(1)(iii) of the proposed regulation.

The proposed model clauses for optional use in complying with the disclosure requirements are contained in Appendix A. Use of the clauses that

appropriately reflect the issuer's EFT program, in conjunction with other requirements of the regulation, will protect the issuer from civil and criminal liability under §§ 915 and 916 of the Act. The Board emphasizes, however, that use of these model clauses is optional; issuers are free to design their own disclosures as long as they comply with the requirements of §§ 205.3(b)(1)(iii) and (d).

Issuers may choose appropriate clauses from the alternatives available, may make changes such as deleting inapplicable words, phrases and clauses, and inserting trade names. They may also change the order in which the model clauses appear, and may use some of the model clauses, while drafting others themselves.

Section A(1) sets forth proposed model clauses for use in fulfilling the requirements of § 911(b)(3) of the Act and § 205.3(b)(1)(iii) of the proposed regulation. It provides alternative clauses. Which one an issuer uses would depend on whether the account in question is to be accessed by a card or by a code alone.

Sections A(2) through A(6) contain the proposed clauses that would comply with § 911(b)(2) of the Act and § 205.3(d) of the proposed regulation. Again, in general, alternative clauses are provided. An exception is section A(2), which contains the model disclosure of the consumer's liability for unauthorized transfers. If an issuer chooses to use this model disclosure, it must use it in its entirety and without changes in sequence or wording, except that choices or deletions may be made where brackets so indicate.

The Board solicits comment on whether these clauses are readily understandable to consumers and whether other clauses are needed.

(4) *Economic Impact Analysis of §§ 909 and 911.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of economic impact of the regulation. The analysis must consider the costs and benefits of the regulation to suppliers and users of EFT, the effects upon competition in the provision of electronic banking services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. The Board is publishing for comment an economic analysis to accompany regulations implementing §§ 911 and 909 of the Act, which become effective on February 8, 1979.

Section 205.3—Issuance of Access Devices. (a) Impact of the regulation on costs and benefits to institutions, consumers and other users. The purpose of prohibiting unsolicited distribution of validated EFT cards<sup>2</sup> is to protect

<sup>2</sup>The term "card" in this economic impact analysis refers to any access device as defined in § 205.12(a) of the regulation.

consumers from unauthorized use of cards intercepted without the consumer's knowledge. The potential risk to the consumer of such a loss varies depending upon whether the consumer had an existing account with the card issuer. If the issuer sent a card to a consumer without an existing account, perhaps as a marketing device to gain new customers, an interception of the card could not result in any potential loss to the consumer since the consumer had not placed funds in the associated account. Thus, an important benefit, particularly to customers of existing accounts, of requiring validation separate from distribution is that it reduces losses which could result from theft of valid cards before they reach the designated customer. Such losses have been experienced both with EFT cards and credit cards. Results of a 1976 survey of 292 institutions issuing EFT cards showed that 40 institutions reported losses related to mail-intercept since first offering EFT services.<sup>3</sup> For these 40 institutions, there were 170 instances of loss, with average dollar loss of \$291 per instance.<sup>4</sup> However, the dollar loss per outstanding card was low since the total number of card-holding customers for the institutions in the survey was several million. For credit cards issued prior to the 1970 prohibition on unsolicited cards, 300,000 per year were estimated to be stolen out of an estimated 200 million credit cards outstanding in the late 1960's; this figure includes mail-intercept as well as other card theft.<sup>5</sup>

The regulation does permit the distribution of unsolicited, but unvalidated cards (§ 205.3(b)). The most general effect of this provision will be seen in the number of accepted cards. Although the impact on the number of accepted cards cannot be quantified, experience of the credit card industry, in the years prior to the prohibition of unsolicited cards under Regulation Z, can give an indication of the bounds of acceptance rates relative to either a more or less restrictive regulation. Unsolicited credit card distribution resulted in a much higher acceptance and usage rate than distribution based on solicitation of consumer requests for cards. The Marine Midland experience in 1966 points out these differences; 33,357 promotional mailings resulted in only 221 applications for credit cards (less than one percent)

<sup>3</sup>Linda Fenner Zimmer, "Cash Dispensers and Automated Tellers: Statistical Data and Analysis with Selected Case Histories," Fourth Status Report (Park Ridge, N.J.: August 1977), p. 222.

<sup>4</sup>Ibid. p. 224.

<sup>5</sup>Sylvia Porter as quoted from *The Washington Star* in U.S. Congress, "Unsolicited Credit Cards," Hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency, Senate, 91st Congress, 1st Session, 1969, p. 243.



while 731 direct mailings of cards resulted in 19 percent usage in a short period and 99 percent retention. Based on this experience, it is expected that allowing distribution of unsolicited, but unvalidated, EFT cards will result in a larger card base and more chance of acceptance by proprietors than would the complete prohibition of distribution of unsolicited cards. On the other hand, the card base and acceptance level is expected to be lower than would obtain if there were no prohibition on sending unsolicited, validated cards.<sup>6</sup>

The regulation requires a two-step procedure for distributing and validating cards. This requirement will increase administrative costs to issuers through additional postage and handling.

An additional potential cost to the issuers would result from the paperwork and legal fees connected with the disclosure requirement (§ 205.3(b)(1)(ii)).<sup>7</sup> However, since the Board is providing model clauses, any additional costs can be minimized.

Another potential cost of the regulation is related to the verification procedures (§ 205.3(b)(2)). By limiting identity verification methods to signature or other signed instruments, photograph, fingerprint, or personal visit, the regulation may reduce incentives for innovation in developing or applying new technology in verification techniques. The Board solicits comment on whether there are presently available or being developed identity verification procedures which are not encompassed by § 205.3(b)(2) and whether the regulation would discourage innovation along these lines.

(b) Effects of the regulation upon competition in the provision of electronic transfer services among large and small financial institutions. A critical factor influencing merchant acceptance of EFT cards is the size of the outstanding card base. Thus, card issuers attempt to use marketing strategies that will achieve a high acceptance ratio for the lowest cost. The credit card experience in the late 1960's showed that the institutions' most successful strategy in achieving a large card base was large mailings of unsolicited cards. By allowing the distribution of unsolicited (although unvalidated) cards, the regulation does not restrict entry potential for new firms as severely as was the case in the credit card industry when distribution of unsolicited cards was prohibited. As

a result of this prohibition, companies that had not already entered the industry on a large scale were at a major disadvantage compared to the large-scale participants. Entry into the industry was difficult and competition was restrained. Thus, § 205.3 is expected to have the effect of maintaining the present level of competition because it does not put small institutions at a competitive disadvantage. In addition, competition could increase since the regulation does not contain restrictions on sending cards to consumers other than present customers.

(c) Effects of the regulation on availability of electronic transfer services to different classes of consumers, especially low-income. To the extent that cards are sent only to institutions' present holders of consumer deposit accounts, the effect of § 205.3 on low-income consumers will be that the distribution of the available EFT services will be approximately the same as the distribution of account holders. Table I presents data on financial assets by income class. It can be seen that usage of depository services rises with income. However, lower usage of depository services by lower-income consumers may be for a variety of reasons, one of which may be lack of availability. The Board solicits comment on whether a potential customer of a financial institution must be employed and/or have a minimum income to qualify for any of the following types of accounts: (i) demand deposit, (ii) savings deposit, (iii) time deposit, (iv) ATS (Automatic Transfer Service) account, and (v) EFT (Electronic Fund Transfer) account.

Financial institutions might not send unsolicited cards to all present account holders. To the extent that such cards represent a costly non-price means of attracting or maintaining deposits, institutions may send cards only to high-volume customers, i.e., to reduce the cost per dollar of account balance. In such an event, the distribution of EFT services would evolve away from low-income to higher-income customers. The Board solicits comment on whether institutions plan to limit unsolicited mailings of EFT cards to a subset of their present deposit customers.

**Section 205.4—Conditions of liability of consumer for unauthorized transfers.** It is important to realize that the liability provisions of § 205.4 will have no impact on either consumers or institutions if the provisions are not a constraint on financial institutions. That is, if the financial institutions would normally assume more liability than is required by the regulation, then the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of

the regulation is relevant only if the liability provisions are more restrictive than those institutions would otherwise assume.

(a) Impact of the regulations on costs and benefits to institutions, consumers and other users. The total net cost or benefit to society of the regulation is related to the expected dollar loss resulting from fraud or unauthorized use of debit cards. The impact of § 205.4 on the aggregate loss may be felt in three ways, two of which are benefits and the third a cost. First, by building in incentives for consumers to report quickly loss or theft of a card or discovery of unauthorized use, the regulation loss or theft of a card or discovery of unauthorized use, the regulation should reduce the number of unauthorized transactions. Second, the relatively long period which consumers have in which to report unauthorized use before they assume full liability for loss will increase issuers' incentives for tight security systems. Third, however, is the possibility of increased unauthorized use because the regulation does not hold the consumer specifically liable for negligence. For example, a customer's liability for unauthorized use of a card does not increase if the customer leaves the identification number on the card.

Limited data on actual loss experience for unauthorized use of EFT and credit cards indicate that, while not insignificant, these losses have not been inordinately high. For example, an Interbank ATM (Automated Teller Machine) loss survey of 125 banks showed that on transactions volume of 10,486,000 and dollar volume of \$41.0 million, the total annual fraud loss was \$290,000, less than one per cent of dollar volume and represented less than \$.03 per transaction.<sup>8</sup> A Payment Systems, Inc. survey of officials at 45 financial institutions offering card-activated EFT services estimated that annual average fraud loss per active card was about \$.10 compared to an average of about \$.03 per card for the total card base. *Nilson Reports* estimates that total credit card fraud loss for 1978 will be \$62.8 million on total transactions volume of \$44 billion, which is less than two-tenths of a per cent of dollar volume. Additional data would be useful. The Board solicits comment on what per cent, number and dollar volume of EFT type ac-

<sup>6</sup>John A. Colin, *What's New in Money-Matics?* Remarks made at the Bank Administration Institute Eighth National Security Conference (Atlanta, Ga.: n.p.: 1977) quoted in Veronica M. Bennett, "Card Fraud and Security in EFT Systems," (Atlanta: Payment Systems, Inc., White Paper, September 7, 1978), p. 13.

<sup>7</sup>Bennett, p. 17.

<sup>8</sup>Spencer Nilson, editor of *Nilson Reports*, during a telephone interview, November 1978.

counts have experienced unauthorized use. How many of these result from loss of card or theft of card? How many result from computer fraud? What has been the average loss, in dollars, per account? Maximum loss? Similarly, what has been the experience for credit cards? What has been the experience for unauthorized use of checks?

In addition to having an effect on the total cost to society of EFT loss, the regulation affects the distribution of the burden of costs between institutions and their customers. This distribution depends on the timing of reporting; the longer the time the consumer takes to report the loss, the more liability the consumer assumes. In order to assess the impact of the regulation on the distribution of loss, reporting-time experience of loss for EFT and credit cards is necessary. The Board solicits comment on what has been the range of an average time span between customers' learning of theft or loss of EFT cards or unauthorized use of their EFT accounts and their reporting it to the card issuer. Similarly, what has been the range of an average reporting time for credit card and check theft, loss or unauthorized use?

The assessment of the social equity of the distribution of costs and benefits of the regulation between institutions and their customers depends on how the ability to assume the loss is weighted. For example, by virtue of its size, income and tax position, a large bank is probably better able to assume a given loss than a low-income consumer. However, such an assessment is highly subjective. It should be noted that the regulation does not fix the distribution of the costs but rather sets the limits to which the institution can shift the burden to consumers. Relatively high potential liability for consumers may discourage usage which could result in a cost to consumers if EFT is cheaper than alternatives. However, competition could encourage institutions to bear more of the liability than required. (This is discussed further in the next section.)

(b) Effects of the regulation upon competition in the provision of electronic transfer services among large and small financial institutions. The conditions of liability imposed by § 205.4 set a minimum liability standard that must be assumed by all financial institutions offering EFT services. This means that all institutions are treated equally in terms of a floor on requirements. However, competition may lead banks to assume more liability than the regulation requires and thus reduce costs to the consumer and increased consumer acceptance. Results of a 1978 ATM Security Survey by the American Bankers Association

indicate that at present banks do not have standard liability provisions.<sup>9</sup> The respondents to the survey (approximately 135 banks, half of which had deposits greater than \$1.0 billion and only six percent of which had deposits less than \$100 million) established liability as follows: (i) case-by-case basis—55.8 per cent, (ii) bank absorbs all losses—24.3 percent, (iii) set dollar limit—9.9 percent, (iv) customer responsible for all losses until loss reported—8.1 percent.

Additional information on the ability of small and large financial institutions to assume liability and their experience to date on liability provisions would be useful. The Board solicits comment on the impact of unauthorized use of EFT systems on profitability of the system for small and large financial institutions. In addition, the Board solicits comment on the extent to which small and large institutions' present liability requirements are more or less restrictive than the regulation.

A major difficulty in analyzing the impact of the regulation on competition between small and large financial institutions is that the impact depends very much on the nature of the EFT systems involved. Thus, the effects of the regulation depend on such considerations as whether widely-accepted franchise systems develop, whether systems are national or regional, or whether they are on or off-line. For example, systems that are widespread or off-line have a greater chance for unauthorized use. The regulation could have a significant impact on the structure of the industry if small proprietary systems cannot afford the regulation's liability requirements.

Even without making predictions about the manner in which EFT systems will evolve, some general observations on the impact of the regulation can be made. (1) First, the regulation will have the least impact on those institutions and franchise systems that are best able to assume the liability and incur per unit costs related to determining liability according to the regulation. To the extent that large systems and institutions benefit from scale and scope economies, they would be less affected than small institutions. (2) In addition, larger institutions may enjoy economies of scale in purchasing security systems, thereby having a lower loss rate and more consumer confidence in their system than small institutions. (3) On the other hand, to the extent that the regulation shifts the burden to the institutions, small institutions may avoid some of the costs since they are more

<sup>9</sup>American Bankers Association, Payments System Planning Division, "Results of an ATM Security Survey," n.p., June 1978.

likely to have a close relationship with customers and may therefore be better able to prescreen and educate them. (4) Finally, small institutions are less likely to be in large metropolitan areas. Therefore, they would tend to be in areas in which there is less crime and in which there is a greater likelihood that proprietors would recognize customers. The Board solicits comment on these four issues. In addition, the Board solicits comment on what will be the costs related to establishing that the consumer has notified the issuer of loss "2 business days after learning of the loss or theft of the access device or possible unauthorized transfer" (§ 205.4(b)(1)).

(c) Effects of the regulation on availability of electronic transfer services to different classes of consumers, especially low-income. In order to evaluate the effects of § 205.4 availability of EFT services to different classes of consumers, it is useful to look at present usage rates of available EFT systems by income class. Data from the Air Force showing use of automatic payroll deposit by income level of active duty personnel can be seen in Table II. Similar data for employees of the Board of Governors of the Federal Reserve System can be seen in Table III. The data indicate that usage of available systems increases with income level. A 1976 consumer panel survey in South Carolina shows reasons that households have chosen not to use ATMs, by income (see Table IV).<sup>10</sup> The two major reasons for not using ATMs were that the service was not needed or was not available; there is no apparent relationship between either the need for or availability of ATMs and income level. Thus, the two sets of data suggest that even when EFT services are available to all income classes, usage rate varies by income.

The regulation may affect both usage and availability of EFT services to classes of consumers, especially low-income consumers. In this respect, the impact of the regulation will probably be related to the amount of potential liability and the complexity of the liability provisions. The amount of potential liability as a percent of consumer assets is significantly higher for low-income consumers than for higher-income consumers.<sup>11</sup> However, if a customer has no overdraft privilege, liability is generally no greater than the amount of funds in the customer's account. As can be seen in Table V, only a small proportion of lower-income families have more than

<sup>10</sup>The panel surveyed includes urban households with annual income greater than \$6,000.

<sup>11</sup>In contrast, at present, consumers bear no liability for check forgery or fraud and a maximum of \$50 for unauthorized use of a credit card.



\$500 in a checking or savings account. Thus, the dollar value of potential loss through unauthorized use for low-income consumers is relatively low. A final consideration is that clear understanding of EFT, the liability involved, and the information in the periodic statement involves some degree of familiarity with financial data. To the extent that low-income consumers are not financially sophisticated, they would be less likely to understand their liability and their periodic statements, and to discover loss or theft within a given time period and would be more likely to put their identification number on the card than high-income consumers. Therefore, they would have a higher probability of a loss, as a percentage of their assets, and possibly in absolute terms, than higher-income consumers. As a result, low-income consumers may be discouraged from using EFT because of relatively complicated liability requirements. However, since relatively high liability is borne by the consumer, financial institutions may be more willing to offer EFT services to low-income consumers because the institutions are protected to some extent from ignorance on the part of consumers, i.e., the consumer bears total liability if the unauthorized use is not reported within 60 days of transmittal of the periodic statement showing the loss and the issuer can prove that the loss would not have occurred if reporting had been within the 60 days.

[6210-01-C]

TABLE I

Families without savings, or checking accounts or liquid assets by family income, 1977\* (percentage distribution)

| Family Income (\$) | No Savings Accounts | No Checking Accounts | No Liquid Assets |
|--------------------|---------------------|----------------------|------------------|
| Less than 3000     | 57.2                | 44.7                 | 30.2             |
| 3,000 - 4,999      | 52.7                | 49.7                 | 33.5             |
| 5,000 - 7,499      | 38.3                | 33.8                 | 15.7             |
| 7,500 - 9,999      | 33.3                | 23.8                 | 9.9              |
| 10,000 - 14,999    | 21.4                | 15.2                 | 5.6              |
| 15,000 - 19,999    | 11.7                | 11.3                 | 3.4              |
| 20,000 - 24,999    | 10.4                | 4.4                  | b/               |
| 25,000 and more    | 5.9                 | 2.0                  | .6               |

\* Source: Thomas A. Durkin and Gregory B. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): table 21-7, 21-8, and 21-9.

a/ Liquid assets include savings accounts, certificates of deposit, checking accounts, and U.S. Government Bonds.

b/ Less than one half of one percent.

TABLE II

Air Force Active Duty Personnel Usage of Automatic Payroll Deposit by Income\* 1978

| Annual Income (\$) | Number of Employees | Employees Using Automatic Payroll Deposit |
|--------------------|---------------------|-------------------------------------------|
| Less than 7,500    | 0                   | 77,297                                    |
| 7,500 - 9,999      | 168,611             | 97,400                                    |
| 10,000 - 11,999    | 142,981             | 72,931                                    |
| 12,000 - 14,999    | 96,107              | 64,203                                    |
| 15,000 - 19,999    | 78,858              | 36,717                                    |
| 20,000 - 24,999    | 41,106              | 37,876                                    |
| 25,000 and over    | 41,876              |                                           |

\* Source: Accounting and Finance Center, Department of the Air Force.

a/ Dollar income equals regular military compensation rates plus a factor to account for bonuses, special pay, and special allowances.



TABLE III

Employees of the Board of Governors  
of the Federal Reserve System  
Usage of Automatic Payroll\*  
1978

| Annual<br>Income (\$) | Number of<br>Employees | Employees Using<br>Automatic Payroll Deposit |         |
|-----------------------|------------------------|----------------------------------------------|---------|
|                       |                        | Number                                       | Percent |
| Less than 7,500       | 21                     | 1                                            | 4.8     |
| 7,500 - 9,999         | 59                     | 9                                            | 15.5    |
| 10,000 - 11,999       | 113                    | 20                                           | 21.8    |
| 12,000 - 14,999       | 262                    | 109                                          | 41.8    |
| 15,000 - 19,999       | 312                    | 179                                          | 57.4    |
| 20,000 - 24,999       | 163                    | 103                                          | 63.2    |
| 25,000 and over       | 530                    | 433                                          | 81.7    |

\* Source: Board of Governors of the Federal Reserve System.

a/ This includes some part-time employees.

TABLE IV

Selected Reasons Why Households  
Have Not Used Automated  
Teller Machines by Income\* (Per Cent)

| Income<br>of Total<br>Household | Unsafe,<br>Room<br>Lighting<br>& Local | Not Needed;<br>Other<br>Facilities<br>Available | Not<br>Available | Suspicious<br>of System | Encourages<br>Overriding | Never<br>Heard<br>of Them | Misc. |
|---------------------------------|----------------------------------------|-------------------------------------------------|------------------|-------------------------|--------------------------|---------------------------|-------|
|                                 |                                        |                                                 |                  |                         |                          |                           |       |
| Under \$7,000                   | 0                                      | 43.8                                            | 33.3             | 11.1                    | 11                       | 10.4                      | 4.2   |
| \$ 7,000-10,999                 | 1.3                                    | 32.8                                            | 44.7             | 14.5                    | 0                        | 2.8                       | 3.8   |
| 11,000-15,999                   | 0.8                                    | 37.3                                            | 38.8             | 19.8                    | 11                       | 3.8                       | 2.5   |
| 16,000-20,000                   | 0.9                                    | 47.9                                            | 38.5             | 11.5                    | 2.8                      | 1.7                       | 0     |
| Over \$20,000                   | 0.8                                    | 47.3                                            | 37.4             | 12.8                    | 0.5                      | 1.4                       | 0.5   |

\* Source: Olin S. Pugh and Franklin J. Ingram, "ATM and the Public,"  
The Bankers Magazine 161 (March-April 1978): p. 45, table 4.

TABLE V

Percentage Distribution of  
Checking & Savings Accounts  
1977\*

| Family income<br>(dollars) | Amount of checking accounts (dollars) |      |         |         |             |             |             |               |               |                |
|----------------------------|---------------------------------------|------|---------|---------|-------------|-------------|-------------|---------------|---------------|----------------|
|                            | None                                  | 1-99 | 100-499 | 500-999 | 1,000-1,999 | 2,000-4,999 | 5,000-9,999 | 10,000-14,999 | 15,000-24,999 | 25,000 or more |
| Less than 3,000            | 44.7                                  | 15.3 | 22.7    | 6.0     | 6.0         | 4.0         | .7          | .7            | 100           | 100            |
| 3,000 - 4,999              | 49.7                                  | 14.5 | 26.8    | 3.4     | 2.8         | 2.8         | a/          | a/            | 100           | 100            |
| 5,000 - 7,499              | 33.8                                  | 16.9 | 29.0    | 10.6    | 5.8         | 2.4         | 1.0         | .5            | 100           | 100            |
| 7,500 - 9,999              | 23.8                                  | 21.0 | 31.4    | 12.4    | 5.7         | 3.3         | 1.9         | .5            | 100           | 100            |
| 10,000 - 14,999            | 15.2                                  | 19.3 | 38.3    | 13.1    | 6.9         | 4.8         | 1.4         | .9            | 100           | 100            |
| 15,000 - 19,999            | 11.3                                  | 16.6 | 36.9    | 12.5    | 12.8        | 6.3         | 2.8         | .9            | 100           | 100            |
| 20,000 - 24,999            | 4.4                                   | 10.3 | 42.9    | 16.3    | 14.7        | 7.5         | 2.4         | 1.6           | 100           | 100            |
| 25,000 and more            | 2.0                                   | 7.4  | 19.2    | 20.9    | 23.2        | 18.3        | 4.0         | 4.9           | 100           | 100            |

| Family income<br>(dollars) | Amount of savings accounts (dollars) |      |         |         |             |             |             |               |               |                |
|----------------------------|--------------------------------------|------|---------|---------|-------------|-------------|-------------|---------------|---------------|----------------|
|                            | None                                 | 1-99 | 200-499 | 500-999 | 1,000-1,999 | 2,000-4,999 | 5,000-9,999 | 10,000-14,999 | 15,000-24,999 | 25,000 or more |
| Less than 3,000            | 57.2                                 | 10.5 | 8.6     | 2.0     | 5.9         | 5.3         | 3.9         | 1.3           | 3.9           | 1.3            |
| 3,000 - 4,999              | 52.7                                 | 9.6  | 9.6     | 5.4     | 5.4         | 6.6         | 5.4         | 1.8           | 1.2           | 2.4            |
| 5,000 - 7,499              | 38.3                                 | 10.7 | 13.8    | 7.1     | 7.1         | 13.3        | 3.6         | 1.5           | 2.0           | 2.6            |
| 7,500 - 9,999              | 33.3                                 | 12.6 | 15.0    | 7.7     | 6.3         | 13.0        | 2.4         | 3.4           | 1.0           | 5.3            |
| 10,000 - 14,999            | 21.4                                 | 11.6 | 15.3    | 8.9     | 10.3        | 11.6        | 6.9         | 4.7           | 4.2           | 5.2            |
| 15,000 - 19,999            | 11.7                                 | 12.0 | 14.0    | 11.7    | 10.4        | 17.9        | 8.8         | 5.8           | 3.2           | 4.5            |
| 20,000 - 24,999            | 10.4                                 | 4.1  | 10.8    | 9.1     | 14.9        | 21.2        | 17.0        | 4.1           | 5.4           | 2.9            |
| 25,000 and more            | 5.9                                  | 2.1  | 4.7     | 4.7     | 7.0         | 18.2        | 14.1        | 15.8          | 13.8          | 13.8           |

\* Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey,"  
(Washington, D.C.: Board of Governors of the Federal Reserve System, 1977):  
tables 21-8 and 21-9.

a/ Less than .5 percent



(5) Pursuant to the authority granted in Pub. L. 95-630, Title XX, § 904 (November 10, 1978), the Board proposes to adopt Regulation E, 12 CFR Part 205, as follows:

#### PART 205—ELECTRONIC FUND TRANSFERS

Sec.

- 205.1 Scope and purpose.
- 205.2 Exempted transfers.
- 205.3 Issuance of access devices.
- 205.4 Conditions of liability of consumer for unauthorized transfers.
- 205.12 Definitions and rules of construction.

#### APPENDIX A—MODEL DISCLOSURE CLAUSES

AUTHORITY: Pub. L. 95-630, Title XX, Sec. 904 (November 10, 1978).

##### 205.1 Scope and purpose.

In November 1978, Congress enacted the Electronic Fund Transfer Act which establishes the basic rights, liabilities and responsibilities of consumers who use electronic money transfer services and of depository and other financial institutions that offer such services. As directed by Congress, this regulation is intended to carry out the purposes of the Act, including primarily the protection of individual consumers engaging in electronic transfers to or from their accounts at financial institutions. Electronic transfers may be used by consumers for the same purposes as paper checks. The principal difference is that, whether for deposit or payment, checks are physically transported. In electronic fund transfer systems, the payment instructions are transmitted by electronic means and standardized computer techniques common to bank deposit accounting. Electronic systems may be used by consumers to transfer funds to and from their accounts in the following ways:

(a) *Electronic deposit of funds to an account.* Consumers may instruct employers and others making regular payments to them to have funds deposited directly into their accounts. This service may be used for depositing wages, social security benefits, dividends, and other types of income payments. In a direct deposit arrangement, the originator of the payment (employer, Social Security Administration, etc.) directs its financial institution to transfer funds electronically to the consumer's financial institution for deposit in the consumer's account. Direct deposit services are begun when a consumer signs an agreement authorizing the originator to send funds directly to the consumer's account in a bank or other financial institution that offers direct deposit services. Automated teller machines are also used for depositing funds. Consumers may deposit cash or checks in these machines which generally are available for use 24 hours a day. Today most of them are located at financial insti-

tutions, supermarkets and airports. To use these machines, a customer is usually issued a card and a special code, called a "personal identification number," by the financial institution.

(b) *Transferring and withdrawing funds from an account.* Electronic facilities provide consumers with alternative ways to withdraw cash, to pay bills and to make purchases from merchants.

(1) *Cash withdrawals.* Consumers may withdraw funds from their accounts and obtain cash by using automated teller machines. Also, consumers may ordinarily obtain cash in addition to goods and services when using the point-of-sale systems described below.

(2) *Bill payment.* Two types of electronic fund transfer services may be used by a consumer to pay bills. First, the consumer may preauthorize merchants and creditors to draw funds from the consumer's account, or secondly, the consumer may direct the financial institution or a third party to pay bills. Under a preauthorized system, a consumer directs a merchant in writing to debit or draw funds from his or her account on a given date in an amount sufficient to pay a bill. Preauthorized debits usually are used to pay recurring bills of a fixed amount, such as insurance premiums, mortgage payments or rent. A consumer may also authorize payment in this manner for variable amount bills, such as credit card and utility bills. Where variable amount bills are paid by preauthorized debits, consumers usually receive notice from merchants as to the amount of the bill and ordinarily a period of time elapses between the date the bill is sent to the consumer and the date the account is charged. When the financial institution provides a bill-payment service, it usually furnishes the consumer with a personal identification code. This code is used when requesting the financial institution to charge the consumer's account and pay a bill. Instructions to pay the bill may be given in writing, verbally by the consumer, or by some other means, such as through a touch-tone telephone using a prearranged coding scheme.

(3) *Paying for purchases.* Consumers may pay for goods and services at the point of purchase by using electronic fund transfer rather than with a check, cash or credit card. This is usually done through use of a card similar in appearance to a credit card. The card identifies the consumer's financial institution and account number in machine-readable form. At the time of purchase, as the card and the proper dollar amount are entered into a machine, the consumer's account is debited electronically and the merchant's account credited. This is done by an

electronic transmission of messages between the consumer's and the merchant's banks. Systems which provide these capabilities are known as "point-of-sale" systems.

(c) *Protections under the regulation.* The Electronic Fund Transfer Act becomes effective in two parts. The first part, which will become effective on February 8, 1979, limits the liability of a consumer for electronic fund transfers that were not authorized by the consumer. It also places limitations on the distribution of debit cards and other means of access. Certain disclosures must be made if the card or other means of access was not requested by the consumer. On May 10, 1980, the remaining provisions of the law will become effective. Of particular significance among the provisions becoming effective in 1980 are those having to do with the disclosure of terms and conditions upon which a financial institution offers electronic transfer services, and the content of the periodic statement which sets forth the transactions (deposits to and withdrawals from the account). Taken together these disclosures require financial institutions to provide details of electronic service offerings and transfers that are not presently required for check transfers. Various provisions of the regulation set forth the terms and conditions for opening an account for electronic fund transfers. The regulation also will provide requirements concerning deposits to or payments from an account. These requirements are outlined as follows:

(1) *Opening an account:* Disclosures concerning account terms (including fees and privacy rights) are required to be made to consumers.

(2) *Continuing requirements:*

(i) A periodic account statement must be issued that contains information describing the transactions and identifying the parties to whom and from whom funds are paid.

(ii) The consumer's liability for unauthorized transfers is limited, in general, based on the time notice of loss, theft or unauthorized transfer is given to the financial institution.

(iii) Error resolution procedures must be provided by financial institutions.

(3) *Deposits to accounts (credits):*

(i) For deposits that are made directly to an account by a third party, notice of receipt or non-receipt of the deposit must be provided to the consumer.

(ii) Receipts must be made available for all deposits made by consumers at electronic terminals.

(4) *Payments from accounts (debits):*

(i) Preauthorized payments must be authorized by the consumer in writing. For some preauthorized payments that vary in amount, the financial in-

stitution must provide advance notice to the consumer. Also, stop payment rights apply to preauthorized payments.

(ii) Receipts must be made available for all payments, including cash withdrawals, initiated by consumers at electronic terminals.

##### § 205.2 Exempted transfers.

This regulation does not apply to the following:

(a) *Check guarantee or authorization services.* Any service which guarantees payment or authorizes acceptance of a check, draft or similar paper instrument and which does not directly result in a debit or credit to a consumer's account.

(b) *Wire transfers.* Any wire transfer of funds for a consumer through the Federal Reserve Communications System, Bankwire network or similar network that is used predominantly for bank-to-bank or business-to-business transfers.

(c) *Certain securities or commodities transfers.* Any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission.

(d) *Automatic transfers from savings to demand deposit accounts.* Any automatic transfer from a savings account to a demand deposit (checking) account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed-upon minimum balance in the consumer's checking account as permitted by 12 CFR Part 217 (Regulation Q) and 12 CFR Part 329.

(e) *Certain telephone-initiated transfers.* Any transfer of funds which (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not pursuant to a prearranged plan under which periodic or recurring transfers are contemplated.

##### § 205.3 Issuance of access devices.

(a) *General rule.* An issuer may issue an access device to a consumer only:

(1) In response to an oral or written request or application therefor;

(2) As a renewal of an accepted access device; or

(3) In substitution for an accepted access device, whether issued by the initial issuer or a successor.

(b) *Exception.* (1) Notwithstanding the provisions of § 205.3(a), an issuer may distribute an access device to a consumer on an unsolicited basis if:

(i) The access device is not validated;

(ii) The distribution is accompanied by a complete disclosure, in accordance with § 205.5, of the consumer's

rights and liabilities which will apply if the access device is validated;

(iii) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device, if validation is not desired; and

(iv) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity.

(2) A consumer's identity shall be verified by comparison of the consumer's signature with the issuer's account records or another signed instrument, or by photograph, fingerprint or personal visit.

(3) An access device shall be considered validated when the issuer has performed any procedure necessary to permit the access device to be used by the consumer to initiate an electronic fund transfer.

(c) *Relation to Truth in Lending.* The Act and this regulation govern the issuance of access devices and the addition to an accepted credit card of the capability to initiate electronic fund transfers. The issuance of credit cards, the addition of a credit feature to an accepted access device and the issuance of credit cards which are also access devices are governed by the Truth in Lending Act and 12 CFR Part 226 (Regulation Z), which prohibit their unsolicited issuance.

(d) *Transition provision.* Until May 10, 1980, an issuer may satisfy the disclosure requirements of § 205.3(b) (1)(ii) by disclosing the following terms in writing in readily understandable language:

(1) The consumer's liability under § 205.4 for unauthorized electronic fund transfers and, at the issuer's option, notice of the advisability of prompt reporting of any loss, theft or unauthorized transfer.

(2) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected.

(3) The type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(4) Any charges for electronic fund transfers or for the right make such transfers.

(5) The circumstances under which the financial institution, if one is involved, will in the ordinary course of business disclose information concerning the consumer's account to third parties.

(6) Whether or not the consumer has the right to stop payment of a preauthorized electronic fund transfer and, if so, the procedure to initiate such a stop payment order.

(7) Whether or not the consumer has the right to receive documentation of electronic fund transfers.

(8) Whether or not the financial institution or issuer has error resolution procedures and, if so, a summary of those procedures and the consumer's rights under them.

(9) Whether or not the financial institution or issuer will be liable to the consumer for its failure to make transfers.

The procedures and rights which the financial institution or issuer is required to disclose under § 205.3(d)(6) through (9) need not comply with the requirements of the Act until May 10, 1980.

##### § 205.4 Conditions of liability of consumer for unauthorized transfers.

(a) *General rule.* A consumer shall not be liable for any unauthorized electronic fund transfers involving the consumer's account unless the access device utilized for such transfers was an accepted access device and the issuer has provided a means whereby the user can be identified as the person authorized to use it, such as by signature, photograph or fingerprint or by electronic or mechanical confirmation.

(b) *Amount of consumer's liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of transfers shall be determined as follows:

(1) If the consumer notifies the financial institution within 2 business days after learning of the loss or theft of the access device or possible unauthorized transfer, the consumer's liability shall not exceed the lesser of \$50 or the amount of money or value of property or services obtained in unauthorized electronic fund transfers prior to notice to the financial institution under § 205.4(c).

(2)(i) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device or possible unauthorized transfer, and the institution establishes that the transfers would not have occurred but for the failure of the consumer to notify the institution within that time, the consumer's liability shall be:

(A) The lesser of \$50 or the amount of money or value of property or services obtained in unauthorized electronic fund transfers prior to the close of the 2 business days, and

"Note that the consumer may learn of possible unauthorized electronic fund transfers from examination of a periodic statement."



(B) The amount of money or value of property or services obtained in unauthorized electronic fund transfers which occur following the close of 2 business days after the consumer learns of the loss or theft of the access device or possible unauthorized transfer and prior to notice to the financial institution under § 205.4(c). The consumer's liability under § 205.4(b)(2)(i) shall not exceed \$500.

(ii) If the institution fails to establish that the unauthorized transfers would not have occurred but for the failure of the consumer to notify the institution, the consumer's liability shall be determined in accordance with § 205.4(b)(1).

(3) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer which appears on the statement, the consumer may be liable for the amount of any unauthorized transfer which the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution.

If the delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(c) *Notice to financial institution.* For purposes of § 205.4, a consumer notifies a financial institution by taking such steps as may be reasonably necessary to provide the financial institution with the pertinent information, orally or in writing, whether or not any particular officer, employee or agent of the financial institution does in fact receive the information. Notice shall also be considered given when the financial institution becomes aware of circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected.

(d) *Determination of liability in certain transfers.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with § 205.4 if

(i) The transfer was initiated by use of an access device which is also a credit card, or

(ii) The transfer also involves an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer when the consumer's account is overdrawn or to maintain an agreed-upon minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

(3) A financial institution and a consumer may agree that the consumer's liability for unauthorized electronic fund transfers will be less than would be determined by § 205.4 of the regulation.

#### § 205.12 Definitions and rules of construction.

For the purposes of this regulation, the following definitions and rules of construction apply, unless the context indicates otherwise:

(a) *"Access device"* means a card, code or other means of access to a consumer's account, or any combination thereof, for the purpose of initiating electronic fund transfers.

An *"accepted access device"* means an access device which the consumer to whom such access device was issued (1) has requested and received or (2) has signed or (3) has used or (4) has authorized another to use, for the purpose of transferring money between accounts or of obtaining money, property, labor or services.

(b) *"Account"* means a demand deposit, savings deposit or other consumer asset account (other than an occasional or incidental credit balance in an open end credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family or household purposes. The term does not include an account held by a financial institution pursuant to a bona fide trust agreement.

(c) *"Act"* means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act).

(d) *"Business day"* means any day on which the offices of the financial institution or the issuer are open to the public for carrying on substantially all business functions.

(e) *"Consumer"* means a natural person.

(f) *"Credit card"* means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor or services on credit.

(g) *"Electronic fund transfer"* means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephone or computer or magnetic tape and which orders, instructs or authorizes a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(h) *"Electronic terminal"* means an electronic device, other than a telephone operated by a consumer,

through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines and cash dispensing machines.

(i) *"Extension of credit"* means the right granted by a creditor to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor, in which the debt is payable by agreement in more than four installments, or does or may require payment of a finance charge, whether in connection with loans, sales of property or services or otherwise.

(j) *"Financial institution"* means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes the agent of such an institution.

(k) *"Issuer"* means any person who issues an access device, or the agent of such person with respect to such access device.

(l) *"Open end credit plan"* means an extension of credit on an account pursuant to a plan under which (1) the creditor may permit the consumer to make purchases or obtain loans from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide; (2) the consumer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(m) *"Unauthorized electronic fund transfer"* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include any electronic fund transfer (1) initiated by a person other than the consumer who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any other person acting in concert with the consumer, or (3) which constitutes an error committed by the financial institution.

(n) Captions and catchlines used in this regulation are intended solely as aids to convenient reference, and no inference as to the intent of any provision of this regulation may be drawn from them.

#### APPENDIX A—MODEL DISCLOSURE CLAUSES

This appendix contains model disclosure clauses for optional use by financial institutions and issuers to facilitate compliance with the disclosure requirements of §§ 205.4 (b) and (d) and § 205.5 of the regulation. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation protects financial institutions and issuers from liability under §§ 915 and 916 of the Act to the extent that they accurately reflect their electronic fund transfer services.

Financial institutions and issuers need not use all the provided clauses, but may use clauses of their design in conjunction with the model clauses. Words and phrases in parentheses are alternative in nature and the inapplicable portions of those words or phrases should be deleted. Financial institutions and issuers may make alterations or substitutions of a technical nature (e.g., substitution of a trade name for the word "card," deletion of inapplicable services) in the clauses in order to reflect the services offered.

#### SECTION A(1)—DISCLOSURE THAT ACCESS DEVICE IS NOT VALIDATED AND HOW TO DISPOSE OF DEVICE IF VALIDATION IS NOT DESIRED (§ 205.4(b)(1)(iii))

(a) *Accounts accessed by cards.* You cannot use the enclosed card until we have validated it. If you do not want the card, destroy it at once.

[Issuer may insert validation instructions here.]

(b) *Accounts accessed by codes.* You cannot use the enclosed code until we have validated it. If you do not want the code, destroy this notice at once.

[Issuer may insert validation instructions here.]

#### SECTION A(2)—DISCLOSURE OF CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS AND OPTIONAL DISCLOSURE OF ADVISABILITY OF PROMPT REPORTING (§ 205.3(d)(1))

(a) *Liability disclosure.* (Contact us AT ONCE if you believe your (card) (code) has been lost or stolen or money is missing from your account. If you contact us within 2 business days, you can lose no more than \$50 if someone used your (card) (code) without your permission.) (If you believe your (card) (code) has been lost or stolen or if you think money is missing from your account, and you contact us within 2 business days after learning of the loss, you can lose no more than \$50 if someone used your (card) (code) without your permission.)

If someone used your (card) (code) without your permission, you could lose as much as \$500 if you do NOT contact us within 2 business days after learning of the loss and we can prove that we could have prevented the losses if you had contacted us.

Also, if your monthly statement shows transfers that you did not make, and you do not contact us within 60 days after the statement was mailed to you, you may not get back any money lost after that time if we can prove that your contacting us would have prevented those losses.

If something prevents your contacting us (such as travel or hospitalization), the time periods may be extended.

#### SECTION A(3)—DISCLOSURE OF TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER (§ 205.4(d)(2))

(a) *Address and telephone number.* If you believe your (card) (code) has been lost or stolen or that an unauthorized transfer from your account has occurred or may occur, call or write:

[Name of financial institution, issuer or agent]

[Address]

[Telephone number]

#### SECTION A(4)—DISCLOSURE OF TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS (§ 205.3(d)(3))

(a) *Account access.* You may use your (card) (code) to:

(1) Withdraw cash from your (checking) (or) (savings) account.

(2) Deposit money in your (checking) (or) (savings) account.

(3) Make payments from your (checking) (or) (savings) account in the amounts and on the days you request.

(4) Make periodic payments from your (checking) (or) (savings) account, such as your mortgage payment.

(5) Transfer funds between your checking and savings accounts in the amounts you request.

(6) Learn the balance(s) in your (checking) (or) (savings) accounts.

(7) Pay for purchases at merchants that have agreed to accept the (card) (code).

(b) *Limitations on frequency of transfers.*

(1) Automated teller machines. Cash withdrawals from our automated teller machines are limited to [insert number, e.g., 3] each [insert time period, e.g., week].

(2) Telephone bill-payment services. Your telephone bill-payment service can be used to authorize payment for [insert number] bills each [insert time period] (telephone call).

(c) *Limitations on dollar amounts of transfers.*

(1) Automated teller machines. You may withdraw up to [insert dollar amount] from our automated teller machines each [insert time period] (time you use the (card) (code)).

#### SECTION A(5)—DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.3(d)(4))

(a) *Per transfer charge.* There will be a charge of [insert dollar amount] for each transfer you make using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service).

(b) *Fixed charge.* There will be a charge of [insert dollar amount] each [insert time period] for our (automated teller machine service) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Minimum balance charge.* There will be no charge for use of our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service), unless the average monthly balance in your (checking account) (savings account) (accounts) falls below [insert dollar amount]. If it does, the charge will be [insert dollar amount] each (transfer) [insert time period].

#### SECTION A(6)—DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.3(d)(5))

(a) *Account information disclosure.* We will not disclose information about your account or the transfers you make to third parties, except:

(1) as necessary to complete transfers.

(2) to verify the existence and standing of your account with us upon the request of a third party, such as a credit bureau.

(3) to comply with government agency or court orders.

(4) [insert notice required by the Right to Financial Privacy Act of 1978.]

(5) in accordance with your written permission.

By order of the Board of Governors,  
December 22, 1978.

THEODORE E. ALLISON,  
Secretary of the Board.

The following are tentative outlines of the complete regulations:

#### OUTLINE A—REGULATION E

#### 12 CFR PART 205—ELECTRONIC FUND TRANSFERS

#### Section 205.1—Scope and Purpose

(a) Electronic deposit of funds to an account.

(b) Transferring and withdrawing funds from an account.

(c) Protections under the regulation.

#### Section 205.2—Exempted Transfers

(a) Check guarantee or authorization services.

(b) Wire transfers.

(c) Certain securities or commodities transfers.

(d) Automatic transfers from savings to demand deposit accounts.

(e) Certain telephone-initiated transfers.

#### Section 205.3—Issuance of Access Devices

(a) General rule.

(b) Exception.

(c) Relation to Truth in Lending.

(d) Transition provision.

#### Section 205.4—Conditions of Liability of Consumer for Unauthorized Transfers

(a) General rule.

(b) Amount of consumer's liability.

(c) Notice to financial institution.

(d) Determination of liability in certain transfers.

#### Section 205.5—Initial Disclosures

(a) General rule (§ 905(a)).

(b) Specific disclosure requirements (§§ 905(a)(1)–(9), 906(b), 910).

(c) Preexisting accounts (§ 905(c)).

#### Section 205.6—Subsequent Disclosures

(a) Change in terms (§ 905(b)).

(b) Annual error resolution notice (§ 905(a)(7)).

#### Section 205.7—Documentation of Transfers

(a) Terminal transfers by consumers (§ 906(a)).

(b) Preauthorized transfers (§ 906(b)).

(c) Periodic statements (§ 906(c)).



**Section 205.8—Preauthorized Transfers**  
(§ 907)

(a) Specific requirements.

**Section 205.9—Error Resolution** (§ 908)

- (a) Notification of errors.
- (b) Correction of errors.
- (c) Recrediting of accounts.

**Section 205.10—Relation to State Law**

- (a) Inconsistent State laws (§ 919).
- (b) Preempted State law provisions (§ 920).
- (c) Exemption for State regulated transfers; procedures and criteria (§ 920).

**Section 205.11—Administrative Enforcement**

- (a) Administrative enforcement (§ 917).
- (b) Issuance of interpretations (§ 915(d)).
- (c) Issuance of model clauses (§ 904(b)).
- (d) Preservation and inspection of evidence of compliance.

**Section 205.12—Definitions and Rules of Construction** (§ 903)<sup>12</sup>

- (a) Access device and accepted access device.
  - (b) Account.
  - (c) Act.
  - (d) Business day.
  - (e) Consumer.
  - (f) Credit card.
  - (g) Electronic fund transfer.
  - (h) Electronic terminal.
  - (i) Extension of credit.
  - (j) Financial institution.
  - (k) Issuer.
  - (l) Open end credit plan.
  - (m) Unauthorized electronic fund transfer.
  - (n) Captions and catchlines.
- Appendix A—Model Disclosure Clauses.

**OUTLINE B—REGULATION E****12 CFR PART 205—ELECTRONIC FUND TRANSFERS****GENERAL PROVISIONS****Section 205.1—Scope and Purpose**

- (a) Electronic deposit of funds to an account.
- (b) Transferring and withdrawing funds from an account.
- (c) Protections under the regulation.

**OPENING AN ACCOUNT FOR EFT SERVICES****Section 205.2—Disclosure Requirements**

- (a) Initial disclosures.
- (b) Preexisting accounts.
- (c) Subsequent disclosures.

**Section 205.3—Issuance of Access Devices**

- (a) General rule.
- (b) Exception.
- (c) Relation to Truth in Lending.
- (d) Transition provision.

**CONTINUING REQUIREMENTS****Section 205.4—Periodic Statements and Error Resolution**

- (a) Periodic statements.
- (b) Identification of transfers.
- (c) Error resolution.

<sup>12</sup> Other definitions to be added.**Section 205.5—Conditions of Liability of Consumer for Unauthorized Transfers**

- (a) General rule.
- (b) Amount of consumer's liability.
- (c) Notice to financial institution.
- (d) Determination of liability in certain transfers.

**DEPOSITS TO AND PAYMENTS FROM ACCOUNTS****Section 205.6—Documentation of Deposits**

- (a) Preauthorized deposits (§ 906(b)).
- (b) Other deposits (§ 906(a)).

**Section 205.7—Documentation of Payments**

- (a) Preauthorized payments (§ 907).
- (b) Electronic terminal payments (§ 906(a)).
- (c) Other payments.

**ADMINISTRATIVE PROVISIONS****Section 205.8—Administrative Enforcement**

- (a) Administrative enforcement (§ 917).
- (b) Issuance of interpretations (§ 915(d)).
- (c) Issuance of model clauses (§ 904(b)).
- (d) Preservation and inspection of evidence of compliance.

**Section 205.9—Relation to State Law**

- (a) Inconsistent State laws (§ 919).
- (b) Preempted State law provisions (§ 920).
- (c) Exemption for State regulated transfers; procedures and criteria (§ 920).

**EXEMPTIONS AND DEFINITIONS****Section 205.10—Exempted Transfers**

- (a) Check guarantee or authorization services.
- (b) Wire transfers.
- (c) Certain securities or commodities transfers.
- (d) Automatic transfers from savings to demand deposit accounts.
- (e) Certain telephone-initiated transfers.

**Section 205.11—Definitions and Rules of Construction** (§ 903)<sup>13</sup>

- (a) Access device and accepted access device.
  - (b) Account.
  - (c) Act.
  - (d) Business day.
  - (e) Consumer.
  - (f) Credit card.
  - (g) Electronic fund transfer.
  - (h) Electronic terminal.
  - (i) Extension of credit.
  - (j) Financial institution.
  - (k) Issuer.
  - (l) Open end credit plan.
  - (m) Unauthorized electronic fund transfer.
  - (n) Captions and catchlines.
- Appendix A—Model Disclosure Clauses.

[FR Doc. 78-361.7 Filed 12-28-78; 8:45 am]

[6320-01-M]

**CIVIL AERONAUTICS BOARD**

[14 CFR Part 249]

[EDR-365A; Docket 33725;

Dated: December 22, 1978]

**PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS AND MEMORANDA****Supplemental Notice of Proposed Rulemaking**

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: This action extends to January 26, 1979 the filing date for comments in a rulemaking proceeding to revise the rules for the preservation of air carrier records. The extension was requested by Delta Airlines.

DATES: Comments by: January 26, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 33725, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. 202-673-5442.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-365 (43 FR 50150, October 26, 1978) the Board proposed to amend Part 249 of the Board's Economic Regulations pertaining to the preservation of records by air carriers. The proposed rule would allow records to be maintained in a form other than on the original paper as is presently required. There are also provisions in the proposed rule concerning such matters as the retention of records, designation of supervisory officials to be in charge of the records, and the requirement of the maintenance of a comprehensive index of the records being preserved.

The comment closing date is December 26, 1978.

Delta Airlines has requested an extension to January 26, 1979. Delta based its request on the need for more time to compile adequately the results of its review and analysis of the effect of the proposed rule.

Upon consideration of the above, the undersigned finds good cause to grant the request for an extension of time for the preparation of comments on the proposed rule.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)), the time for filing comments is extended to January 26, 1979.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

RICHARD B. DYSON,  
Associate General Counsel.

[FR Doc. 78-36355 Filed 12-28-78; 8:45 am]

[3510-08-M]

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[15 CFR Part 923]

**COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS****Proposed Rule**

AGENCY: National Oceanic and Atmospheric Administration, NOAA, Department of Commerce.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations established revised procedures the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA) proposes to adopt concerning amendments to approved State coastal management programs. These procedures would replace those presently contained in Subpart I, 15 CFR Part 923, Interim-Final Regulations published in the FEDERAL REGISTER on March 1, 1978 (Vol. 43, No. 41, pages 8425-8429).

DATE COMMENTS DUE: January 29, 1979.

FOR FURTHER INFORMATION, CONTACT:

Carol Sondheimer, Acting Chief, Policy and Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. 202-634-4245.

SUPPLEMENTARY INFORMATION: On March 1, 1978, the National Oceanic and Atmospheric Administration published interim-final regulations dealing with requirements for the development and approval of state coastal management programs pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter referred to as the "Act.") Contained in those regulations is Subpart I which defines changes to approved state programs and contains procedures for incorpo-

rating these changes into a state's program.

On July 6, 1978, the National Oceanic and Atmospheric Administration issued a notice in the FEDERAL REGISTER (Vol. 43, No. 130, pages 29106-29109) extending the comment period on the interim-final regulations to August 31, 1978. This extension notice specifically noted the manner in which Office of Coastal Zone Management intended to revise substantially Subpart I dealing with changes to approved state programs.

Based on comments received during the extended comment period, Office of Coastal Zone Management since has revised Subpart I. Because these revisions are substantially different from those described in the July 6, 1978, extension notice, the Office of Coastal Zone Management now is providing all interested and affected parties a further opportunity to review and comment on this subpart prior to its incorporation into the Coastal Zone Management Program Development and Approval Regulations and their publication in final form.

Until final regulations are published, the interim-final regulations published March 1, 1978, are in effect.

**SUMMARY OF SUBPART I PROVISIONS**

These proposed regulations would eliminate the distinction in the Interim-Final Regulations between amendments and refinements. Instead two classes of actions would be treated as amendments. One class would deal with substantive changes in enforceable policies or authorities related to: (1) boundaries, (2) uses subject to a State's management program, (3) criteria or procedures for designating areas of particular concern or areas for preservation or restoration, and (4) policies or procedures for consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature (See § 923.80(c)). The second class of actions which would be treated as amendments would involve local coastal programs, for States employing the control technique of local implementation authorized by section 306 (e)(1)(A) of the Act. These are local programs which will be approved by a State subsequent to that State's management program receiving full approval by the Assistant Administrator for Coastal Zone Management (hereafter referred to as the Assistant Administrator) (See § 923.80(d)). Other changes to a State's program which are in accordance with procedures contained in a State's approved program will be considered routine program implementation which are not subject to the amendment procedures contained in § 923.82. For rou-

time program implementation, States must notify the Office of Coastal Zone Management and affected parties (including relevant Federal agencies) of such changes so that the consistency provisions of section 307 of the Act can apply (See § 923.84).

Section 923.81 describes the content of amendment requests, the timing of submission and who may request an amendment. Because the Office of Coastal Zone Management wants to coordinate its own review procedures with those occurring at the State level in order to minimize delays and duplication. States are encouraged to submit amendment requests prior to final State action. (See § 923.81(c).)

Upon receipt of an amendment request, the Office of Coastal Zone Management will review it in order to make two determinations: (1) that the program, if changed according to the amendment request, would still constitute an approvable program and (2) that certain procedural requirements of section 306(c) of the Act have been met. (See § 923.82(a) for detailed criteria by which these determinations will be made.)

If a determination is made by the Assistant Administrator as a preliminary matter that the amendment request is approvable, then a determination will be made whether an environmental impact statement (EIS) is required, pursuant to the National Environmental Policy Act of 1969, as amended. (See § 923.82(c).)

Where an EIS is required the Office of Coastal Zone Management will follow the standard procedures provided by the Council on Environmental Quality (CEQ). (See § 923.82(c)(1).)

Where an EIS is not required, the Office of Coastal Zone Management will publish notice in the FEDERAL REGISTER of the content of the proposed amendment and the Assistant Administrator's intent to approve. Where a state has provided opportunity for timely review and comment on its proposed amendment at the State or local level, the Assistant Administrator will normally approve the proposed amendment after the close of the comment period unless the head of a Federal agency raises a serious disagreement with the State about its proposed amendment pursuant to section 307(h) of the Act. (See § 923.82(c)(2).)

Section 923.83 describes mediation procedures available to attempt to resolve serious disagreements between a Federal Agency and a coastal State with respect to proposed amendments.

Section 923.85 contains conditions and procedures by which funding for approved programs may be terminated for programmatic reason. This section is essentially unchanged, except for minor editorial changes, from § 923.83 of the Interim-Final regulations.



## PUBLIC REVIEW AND COMMENT

NOAA invites public review and comment on this proposed rule so it again may be modified, if necessary and where legally permissible, to fully satisfy the requirements of the Act in a manner which addresses the concerns of all parties affected by the regulations. Written comments should be submitted to: Carol Sondheimer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington D.C. 20235, on or before January 29, 1979. Following the close of the comment period, and after review of comments, this proposed rule may be amended and will be published along with the rest of the Program Development and Approval Regulation as final regulations in the FEDERAL REGISTER.

M. P. SNIDERO,  
Acting Deputy Assistant Administrator for Administration.

## PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

## Subpart I—Amendments to Approved Management Programs

- 923.80 General.  
923.81 Request for amendments.  
923.82 Amendment review approval procedures.  
923.83 Mediation of amendments.  
923.84 Routine program implementation.  
923.85 Termination and withdrawal of administrative funding.

## Subpart I—Amendments to Approved Management Programs.

## § 923.80 General

(a) This subpart establishes the criteria and procedures by which amendments to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Statutory Citations, Subsection 306(g):

Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c). . . . (N)o grant shall be made under this section to any coastal state after the date of such amendment or modification, until the Secretary approves such amendment or modification.

## Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice

of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantive changes in enforceable policies or authorities related to:

- (1) Boundaries;
- (2) Uses subject to the management program;

(3) Criteria or procedures for designating areas or particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

(d) For States employing the control technique authorized by section 306(e)(1)(A) of the Act (local implementation pursuant to State criteria and standards), local coastal programs, which will be approved by the State subsequent to the State's management program receiving full approval by the Assistant Administrator, shall be treated as amendments to the State's approved management program. Subsequent changes to local coastal programs will not be treated as amendments to the State's management program if they were adopted in accordance with the following procedures:

(1) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of changes to local programs;

(2) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to its approval of local programs changes; and

(3) Review by the State of the adequacy of local government consideration of facilities identified in a State's management program in which there is a national interest where a local program change may affect such facilities.

## § 923.81 Request for amendments.

(a) **Requirement.** Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) **Requirements.** Amendment requests shall contain the following:

(1) Description of the proposed change, including specific pages and text of the management program that

will be changed if the amendment is approved by the Assistant Administrator;

(2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendment;

(i) At least one public hearing must be held on the proposed amendment, pursuant to sections 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

(Comment. Where administratively possible, States should endeavor to tie the public hearing(s) on the proposed amendment to existing State hearing procedures, for example, State agency hearings required under State law prior to approval of local coastal programs. Since hearings on amendments to approved management programs are subject to a minimum 30 day notice, States may want to alter or supplement their notice procedures where these presently provide less than 30 days notice.)

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments;

(i) Where OCZM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(Comment. See related discussion in paragraph (c).)

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in (1) above), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed;

(5) Environmental Impact Assessment;

(6) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

(c) Requests for amendments should be submitted to the Assistant Administrator whenever possible prior to final

State action to implement a major program.

(Comment. Where a program change will be effectuated by State administrative action, such as adoption of State agency rules and regulations or State commission approval of mandated local programs, the request for an amendment of the State's approved management program should occur before final State agency action in order that OCZM may coordinate its review period with that occurring at the State level.

Where a program amendment is the result of legislative action, OCZM recognizes it will be more difficult to submit amendment requests as a matter of course prior to final State action. Even in these cases, nonetheless, OCZM encourages States to submit amendment requests prior to final legislative action.)

## § 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment request, still would constitute an approvable program. For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(i) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(ii) Transitional and intertidal areas;

(iii) Salt marshes and wetlands;

(iv) Islands;

(v) Beaches; and

(vi) Waters under tidal influence.

For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(i) Identify which uses are subject to the management program;

(ii) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of sections 302 and 303 of the Act; and

(iii) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval.

For amendments affecting criteria for designating areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(i) Criteria for marine designations;

(ii) Designation of areas on a generic or site-specific basis;

(iii) Description of how the management program addresses and resolves

the management concerns for which areas are designated; and

(iv) Guidelines regarding priority of uses, including uses of lowest priority.

For amendments affecting criteria for designating areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to:

(i) Provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values;

For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(i) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedure;

(ii) The sources relied upon for such consideration;

(iii) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered; and

(iv) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act.

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (sections 306(c)(1) and (c)(3)); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(c) of the Act have not been met, the Assistant Administrator shall advise the

State in writing of the reasons why the amendment request cannot be considered.

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with respect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the management program unapprovable, that State may be subject to termination of program approval and withdrawal of administrative funding. (See § 923.85.)

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(c) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(Comment. Where State management programs contain adequate opportunities for governmental and public review and comment on their proposed amendment request (as discussed in § 923.82(a)(2)(i)), OCZM anticipates that the 45 day review period for its DEIS and the 30 day review period for the FEIS will be strictly adhered to.)

(i) Following review of comments on the FEIS, the Assistant Administrator will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the FEDERAL REGISTER. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the FEDERAL REGISTER of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period, the Assistant Administrator



may approve the proposed amendment and issue notice thereof in the FEDERAL REGISTER.

#### § 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized

for serious disagreements during program implementation. (See § 923.54).

#### § 923.84 Routine program implementation.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in §§ 923.80(c) and (d), will be considered routine program implementation. Such routine implementation is not subject to the amendment procedures contained in §§ 923.81-923.82.

(b) Prior to issuing notice to the general public of new, relevant information about, or requirements of, the program that result from routine program implementation, a State shall advise the Office of Coastal Zone Management of this action in order that OCZM may review the action to insure it does not constitute an amendment.

(1) States have the option of notifying the Office of Coastal Zone Management of routine program imple-

mentation on a case-by-case basis, periodically throughout the year, or annually.

(2) In determining when and how often to notify the Office of Coastal Zone Management of such actions, States should be aware that Federal consistency will apply only after general public notice has been provided. (See paragraph (d)(1) of this section.)

(c) Within 3 weeks of receipt of notice from a State, the Office of Coastal Zone Management shall inform the State whether it concurs that the action constitutes routine program implementation.

(d) Where the Office of Coastal Zone Management concurs, a State then should provide general public notice of the action to affected parties (including relevant Federal agencies).

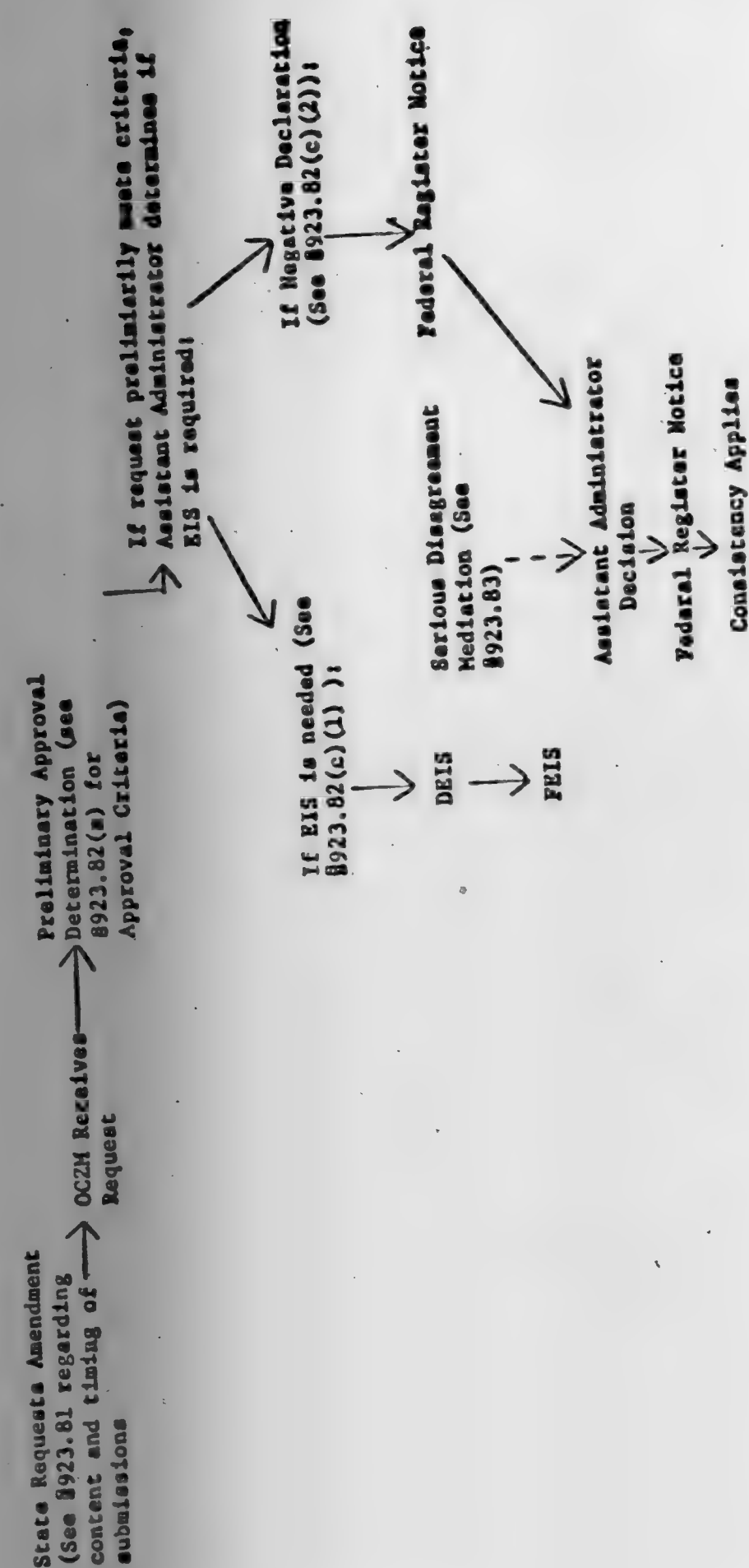
(1) Federal consistency with the action shall not be required until this notice has been provided.

(e) Where the Office of Coastal Zone Management does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81-923.82.

[3510-08-C]

## CHART

## AMENDMENT PROCESS





### § 923.5 Termination and withdrawal of administrative funding.

#### (a) Statutory Citation, Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(b) In addition to the provisions contained in OMB Circular A-102 relating to termination and withdrawal of funding awarded pursuant to a grant award, the Assistant Administrator may recommend to the NOAA Grants Office that section 306 grant funding be terminated and withdrawn if the Assistant Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) That State has been provided notice of intent to terminate and withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence, or justification for program alteration.

(c) Situations which may lead to notice of intent to terminate and withdraw funding include:

(1) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the Assistant Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified; or

(2) In going through the amendment process, a State acts to implement that amendment prior to approval by the Assistant Administrator.

(d) In the event there is cause for terminating and withdrawing section 306 funding, notice in the form of written documents from the Assistant Administrator and the NOAA Grants Officer to the Governor of the State in question or the head of the designated State agency shall be provided advising of the intent to terminate an approved grant and to withdraw any unexpended portions of funding assistance. Included in this notice will be the reasons for the proposed termination and withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence or justification for alteration of its program. Such opportunity to present evidence is referred to in subsection 312(b) of the Act shall consist of a

thirty day period, commencing on receipt of notice, within which the State may respond by providing written materials demonstrating adherence to or justification for altering its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration. Such additional time shall not extend beyond a subsequent thirty days from the termination of the first thirty day period. In total then, a State may have a maximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of a State's evidence with respect to adherence or justification for alteration, a final determination shall be made by NOAA with respect to termination and withdrawal of funding assistance. If termination and withdrawal of funding is deemed appropriate, the NOAA Grants Office shall take appropriate action to terminate or withdraw funds. If funding is terminated and withdrawn pursuant to this section notice shall be placed in the FEDERAL REGISTER. Once funding is terminated and withdrawn pursuant to this section, Federal consistency pursuant to section 307 of the Act shall cease to apply to that State's program.

[FR Doc. 78-36270 Filed 12-28-78; 8:45 am]

#### [6750-01-M]

### FEDERAL TRADE COMMISSION

[16 CFR Chapter I]

#### ADVERTISING OF VETERINARY GOODS AND SERVICES

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to forego temporarily proposed rulemaking.

SUMMARY: The Federal Trade Commission on recommendation from its staff has decided to forego temporarily proposed rulemaking regarding certain restrictions on advertising of veterinary goods and services. This notice describes staff's proposed Rule and the reasons for the Commission's action with respect thereto.

ADDRESS: All documents submitted in response to this notice should be sent to F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

Paul K. Trause, Program Advisor for Occupational Regulation, Federal Trade Commission, Washington, D.C. 20580, 202-523-5344; or F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202, 303-837-2271.

### SECTION A. THE PROPOSED RULE CONCERNING ADVERTISING OF VETERINARY GOODS AND SERVICES

Staff of the Federal Trade Commission was authorized by the Commission on December 19, 1975, to undertake an industrywide, non-public investigation into the regulation of the veterinary profession. Among the various issues of concern in this investigation were the restraints on veterinary advertising. Staff's completed investigation of this issue has resulted in a publicly available document entitled Staff Report on Advertising of Veterinary Goods and Services. The Staff Report may be obtained through the Public Records Branch, Federal Trade Commission, Room 130, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The Staff Report discusses facts which suggest that the restraints on veterinary advertising resulting from public and private enactments are widespread and pervasive. Moreover, the Report suggests that these restraints may be unfair and deceptive within the meaning of Section 5 of the Federal Trade Commission Act, requiring appropriate relief.

Because the main body of the Staff Report was drafted prior to the Commission's issuance of the Trade Regulation Rule Concerning Advertising of Ophthalmic Goods and Services (16 CFR Part 456), the Report does not fully reflect the approach set forth in that Rule. In publishing the Staff Report Concerning Advertising of Veterinary Goods and Services, the Commission has not adopted the analysis or conclusions contained therein.

The Staff Report sets out a profile of the veterinary profession (Part I), describes the public and private restraints on veterinary advertising (Part II), discusses the economic effects of such restraints (Part III), and the arguments used to justify these restraints (Part IV). In Part V, the Report recommends a Trade Regulation Rule and in Parts VI and VII, respectively, discusses the legal basis for such Rule and the jurisdictional considerations with respect thereto.

The full text of staff's proposed Trade Regulation Rule may be found at pages 100-102 of the Staff Report. If enacted, the proposed Trade Regulation Rule would:

1. Prohibit members of the veterinary profession from engaging in any activity which burdens, limits or restricts the ability of any other industry member to advertise, in any medium, nondeceptive statements or claims concerning veterinary goods and services;

2. Prohibit veterinary industry members from relying on any non-federal laws or regulations or any private codes of conduct as a reason for not

advertising in any medium, nondeceptive statements or claims concerning veterinary services;

3. Limit the disciplining of veterinary association members who engage in advertising;

4. Prohibit veterinary industry members from complying with any non-federal law or regulation or any private rule which requires unduly burdensome disclosures.

### SECTION B. COMMISSION ACTION WITH RESPECT TO STAFF'S PROPOSED RULE CONCERNING ADVERTISING OF VETERINARY GOODS AND SERVICES

After Staff completed its initial draft of the Report, it was learned that the major national association of veterinarians, the American Veterinary Medical Association (AVMA), was recommending that state veterinary licensing boards substantially relax their restraints on veterinary advertising. In conjunction with this recommendation, the AVMA published a set of proposed Regulations concerning veterinary advertising. These Regulations are analyzed in relation to the proposed Rule in the Preface to the Staff Report.

The AVMA has also revised that section of its Code of Veterinary Medical Ethics which, theretofore, had prohibited virtually all forms of veterinary advertising. Simultaneously, the AVMA announced a study of the annotations to this section of its ethical code which may culminate in revisions of these annotations.

Because the AVMA has taken creditable actions which may result in the voluntary relaxation of the public and private restraints on veterinary advertising, the Commission has decided, in the exercise of its discretion, to forego temporarily rulemaking in this area.

Through the end of June, 1979, Commission staff will monitor the revisions, if any, to the public and private enactments that prohibit or restrict veterinary advertising. Additionally, staff will monitor the effects of such revisions, if any, with particular concern to the actual occurrence of veterinary advertising. If, at the end of this period, staff reports that the restraints on veterinary advertising are no longer prevalent, the Commission may decide to forego permanently rulemaking in this area. On the other hand, if the restraints remain prevalent or the revisions of such restrictions have not been effectively implemented, the Commission may publish a proposed rule or take such other action as may be appropriate under the circumstances.

### SECTION C. INVITATION TO COMMENT

Any interested person may submit data, views, or arguments on any issue

of fact, law or policy which may pertain to the staff's proposed Rule or the Commission's action with respect thereto.

Such written comments will be accepted until March 31, 1979, and should be directed to F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202. To assure prompt consideration, comments should be identified as "Veterinary Advertising Comment." By direction of the Commission.

CAROL M. THOMAS,  
Secretary.

[FR Doc. 78-33991 Filed 12-28-78; 8:45 am]

#### [6355-01-M]

### CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1205]

#### POWER LAWN MOWERS

Extension of Safety Standard Development Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time.

SUMMARY: The Consumer Product Safety Commission extends until February 15, 1979, the period during which it must either (1) issue a final safety standard addressing blade contact injuries associated with walk-behind power lawn mowers or (2) withdraw the portions of the previously proposed standard that address such injuries. This extension is necessary in order for the staff to analyze comments it has recently received concerning the safety and reliability of brake-clutch mechanisms for power lawn mowers.

FOR FURTHER INFORMATION CONTACT:

Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (202) 634-7770.

SUPPLEMENTARY INFORMATION: On May 5, 1977 (42 FR 23052), the Commission proposed a safety standard for power lawn mowers (16 CFR Part 1205). Section 9(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2058(a)(1)) requires that within 60 days after the publication of a proposed consumer product safety rule, the Commission shall either (1) promulgate a rule respecting the risk of injury associated with such product or (2) withdraw the applicable notice of proceeding, unless the Commission extends the 60-day period for good cause and publishes its reasons in the FEDERAL REGISTER. The Commission has pre-

viously extended the time for either issuing a final standard or withdrawing the proposal to December 29, 1978, for requirements addressing blade contact with walk-behind mowers and to December 31, 1979, for other risks of injury addressed by the proposed standard, such as those for thrown objects and for riding mowers (May 5, 1977, 42 FR 23052; October 7, 1977, 42 FR 54573; June 7, 1978, 43 FR 24697).

As part of its consideration of potential requirements addressing blade contact injuries, the Commission on November 2, 1978, requested comment on data it had received concerning the reliability and safety of brake-clutch mechanisms for power lawn mowers and also sought comment on several questions concerning this subject (43 FR 51038). The period for response to these requests was set to expire November 22, 1978. However, the Commission received several requests for an extension of this period and for the Commission to allow the presentation of oral comments on this subject. In response to these requests, the Commission extended the comment period until December 15, 1978, and allowed the oral presentation of comments on December 11, 1978 (43 FR 55771).

A public meeting at which the Commission would consider the issuance of a final safety standard addressing the risk of injury from contact with blades of walk-behind power lawn mowers was originally scheduled for December 15, 1978. However, because of the extension of the comment period concerning brake-clutch safety and reliability, discussed above, and because of the additional time that will be required for the staff to analyze the comments that have been received and the transcript of the oral presentation, it is not possible for the Commission to consider and issue a standard by December 29, 1978.

The Commission presently plans to consider the issuance of a standard at its meeting on January 25, 1979. If the Commission votes at that time to issue a final standard, an additional period will be required to make any necessary changes in the FEDERAL REGISTER notice that will issue the standard and to arrange for publication of the standard in the FEDERAL REGISTER.

Accordingly, the Commission hereby extends until February 15, 1979, the period during which it must either issue a final standard addressing blade contact injuries associated with walk-behind power lawn mowers or withdraw the proposal of the requirements addressing such injuries. The period ending December 31, 1979, for other requirements of the proposal is not affected by this extension. However, the Commission may in the future, for good cause shown, extend either of these periods as appropriate.



Dated: December 22, 1978.

SADYE E. DUNN,  
Secretary, Consumer Product  
Safety Commission.

(FR Doc. 78-36367 Filed 12-28-78; 8:45 am)

[4110-07-M]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

(Regulations No. 4)

## FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Reduction of Benefits to Maximum

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Proposed Rule Making.

**SUMMARY:** The amendment to the regulations reflects the provision of Section 202 of Pub. L. 95-216 (Social Security Amendments of 1977) which provides a new formula for determining the family maximum for years after 1978.

**DATES:** Your comments will be considered if we receive them no later than February 27, 1979.

**ADDRESSES:** Send your written comments to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

**FOR FURTHER INFORMATION CONTACT:**

David B. Smith, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7951.

**SUPPLEMENTARY INFORMATION:** The amendment to the regulations implements that portion of Section 202 of Pub. L. 95-216 which provides for a maximum amount that may be paid on the earnings record of an insured individual for any one month. Prior to the amendment the maximum amounts were specific dollar amounts shown in a table in the law. The amendment substitutes a formula for fixing the maximum. The formula maintains the same approximate relationship between the maximum pay-

able on the worker's account and the worker's primary insurance amount (PIA) as under present law. Where the maximum applies, individual benefits are adjusted so that the total is, in general, not exceeded. For years after 1978, the maximum is computed by applying set percentages to dollar portions of the PIA. The dollar portions will be updated each year as average earnings rise and will be applied to persons becoming eligible within the year for which the dollar portions are effective. The new dollar portions shall be published in the Federal Register on or before November 1 of each year after 1978 and shall be effective with the following year.

The amendment is to be issued under the authority of Sections 203, 205, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended; 53 Stat. 1368, as amended; 49 Stat. 647, as amended; 42 U.S.C. 403, 405, and 1302.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance, and 13.803 Social Security—Retirement Insurance.)

Dated: August 15, 1978.

DON WORTMAN,  
Acting Commissioner  
of Social Security.

Approved: September 1, 1978.

HALE CHAMPION,  
Acting Secretary of Health,  
Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising paragraph (a) of § 404.403 to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) *Determining maximum amounts for months after 1964.* (1) *Eligibility or death after 1978.*

If more than one person is entitled to monthly benefits for the same month on the same earnings record, the amount of the monthly maximum depends on the year the insured individual attained age 62, became eligible for disability benefits or died before reaching age 62 or becoming disabled.

(i) If an insured individual attains age 62 or dies in 1979, the monthly maximum is as follows:

(a) 150 percent of the first \$230 of the individual's primary insurance amount, plus

(b) 272 percent of the primary insurance amount over \$230 but under \$333, plus

(c) 134 percent of the primary insurance amount over \$332 but under \$434, plus

(d) 175 percent of the primary insurance amount over \$433.

(ii) For purposes of determining the monthly maximum, the year of death or attainment of age 62 does not control if the insured individual became entitled to a disability benefit within the preceding 12-month period. Instead the year of eligibility for the disability insurance benefit controls.

(iii) If an insured individual becomes eligible or dies after 1979, the monthly maximum is computed as in paragraph (a)(1)(i) of this section. However, the dollar amounts shown there will be updated by multiplying them by the quotient obtained from applying the formula in § 215(a) of the Social Security Act, as amended (42 U.S.C. 415(a)).

(iv) An amount computed under paragraph (a)(1)(i) of this section that is not a multiple of \$0.10 is rounded to the next higher multiple of \$0.10. An amount computed under paragraph (a)(1)(iii) of this section is rounded to the next higher dollar if the amount is an exact multiple of \$0.50. Otherwise, it is rounded to the nearest \$1.

(v) On or before November 1 of each calendar year after 1978, the Secretary shall publish in the FEDERAL REGISTER the formula to be used for determining the monthly maximum for the following year.

(vi) If any of the persons entitled to benefits on the earnings record of an insured individual would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits of all such persons may not be reduced to less than the smaller of: (a) the sum of the maximum amounts of benefits payable on the earnings records of all the insured individuals, or (b) 1.75 times the highest primary insurance amount possible for that month based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year.

(vii) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the others was computed under the provisions in effect after 1978, the maximum monthly benefits are computed under paragraph (a)(1)(vi)(b) of this section. The family maximum provisions applicable before 1979 remain in effect for individuals who before 1979 became eligible for old-age benefits or disability benefits or died before becoming eligible.

(2) *Eligibility or death before 1979.* Where more than one person is enti-

tled to monthly benefits for the same month on the same earnings record and the total of the monthly benefits exceeds the amount appearing in column V of the applicable table in section 215(a) of the Act on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable, the total benefits for each month after 1964 are reduced to the amount appearing on the appropriate line in column V; provided that when any of the persons entitled to benefits on the insured individual's earnings would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the basis of the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of: (i) the sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals, or (ii) the last figure in column V of the applicable table or deemed to be in section 215(a) of the Act. The "applicable" table or deemed to be in section 215(a) of the Act means that table which is effective for the month the benefit is payable.

(FR Doc. 78-36343 Filed 12-28-78; 8:45 am)

[1505-01-M]

Food and Drug Administration

[21 CFR Part 350]

(Docket No. 78N-0064)

## ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER USE

Establishment of a Monograph; Notice of  
Proposed Rulemaking

Correction

In FR Doc. 78-28083 appearing at page 46694 in the issue for Tuesday, October 10, 1978, make the following corrections:

(1) On page 46694 change the following: In the middle column, in the third complete paragraph, change the date in the eleventh line from "November 6, 1978" to "November 9, 1978", and change the reference to "(21 U.S.C. 333(j))" in the 17th line to read "(21 U.S.C. 331(j))". Also, in the second line from the bottom of the column, change "effective and misbranded" to read "effective and not misbranded". In the third column, in the last line of the first complete paragraph, change "their further use" to read "their future use".

(2) On page 46698, at the bottom of the center column, the last paragraph (designated footnote 1) should be deleted because it is a duplication of a footnote appearing earlier in the document.

(3) On page 46700, first column, in the second line of the second complete paragraph, the word "accrine" should have read "eccrine".

(4) On page 46704, first column, in the 13th line of the third complete paragraph, "containing research" should have read "continuing research".

(5) On page 46705, center column, in the seventh line of the second complete paragraph, "S. edidermidis" should have read "S. epidermidis".

(6) On page 46706, first column, in the third complete paragraph, beginning in line 15 and ending in line 17,

$$H_0 = P < 0.5$$

$$H_A = P \geq 0.5 \quad (\alpha = 0.05, \text{one sided}),$$

where  $H_0$  is the null hypothesis,  $P$  is the probability,  $H_A$  is the alternative hypothesis, and  $\alpha$  is the predetermined arbitrary level of significance.

(11) On page 46720, center column, under "References", in item number six, "14001" should have read "140001".

(12) In page 46726, first column, after the fifth paragraph the heading "References" should be inserted.

$$H_0 = P < 0.5$$

$$H_A = P \geq 0.5 \quad (\alpha = 0.05, \text{one sided})$$

where  $H_0$  is the null hypothesis,  $P$  is the probability,  $H_A$  is the alternative hypothesis, and  $\alpha$  is the predetermined arbitrary level of significance.

[1505-01-M]

[21 CFR Part 352]

(Docket No. 78N-00338)

## SUNSCREEN DRUG PRODUCTS FOR OVER-THE- COUNTER HUMAN USE

Establishment of a Monograph; Notice of  
Proposed Rulemaking

Correction

In FR Doc. 78-22963 appearing at page 38206 in the issue for Friday, August 25, 1978 and corrected on page 58097 in the issue for Tuesday, December 12, 1978, in the third column, the correction numbered 13, third line, insert "a" directly after the quotation mark.

delete the following sentence: "In each case, the lowest concentration was reduced to zero."

(7) On page 46708, third column, in the third complete paragraph (designated "a."), in the first line, "long-term" should have read "long-time".

(8) On page 46709, in the first column, in the first line of the second complete paragraph, "The public is not able to purchase" should have read "The public is now able to purchase".

(9) On page 46712, middle column, in the first line of the second complete paragraph, "These findings several obvious ways" should have read, "These findings suggest several obvious ways".

(10) On page 46717, first column, in the fifth complete paragraph, the formula should have read as set forth below:

(13) On page 46732, center column, the formula in paragraph (b) of § 350.44 should have appeared as follows: Also, in paragraph (c) of § 350.44, under "Total number of test subjects", the entry now reading "35" should have read "25".

[4210-01-M]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association  
[24 CFR Part 390]

(Docket No. R-78-604)

### GRADUATED PAYMENT MORTGAGES

Proposed Amendments To Establish a New  
Modified Pass-Through Securities Program

AGENCY: Government National  
Mortgage Association, HUD.

ACTION: Proposed rule.

**SUMMARY:** This proposal establishes a new mortgage-backed securities program that provides for the guaranty by GNMA of securities based on and backed by pools of Graduated Payment Mortgages (GPM's). GPM loans are single family mortgages whose



monthly payments increase annually for a fixed number of years. Only GPM's that are insured by the Federal Housing Administration under section 245 of the National Housing Act and that are scheduled to have increased payments for a maximum of five years are eligible for inclusion in GNMA pools. The program is intended to expand the secondary market in GPM's and thereby make available additional mortgage money at reasonable interest rates.

DATE: Comments due: January 29, 1979.

ADDRESS: Comments should be mailed or delivered to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

#### FOR FURTHER INFORMATION CONTACT:

Warren Lasko, Vice President for Mortgage-Backed Securities, Government National Mortgage Association, 451 Seventh Street, SW., Room 6224, Washington, D.C. 20410, (202) 755-8772.

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed amendments is to establish a new program of federally guaranteed mortgage-backed securities which will allow for the inclusion of so-called Graduated Payment Mortgages in the pools which back the securities.

Under section 306(g) of the National Housing Act, as amended, the Government National Mortgage Association (GNMA) guarantees the timely payment of principal and interest on securities issued by approved private lenders, which securities are backed by federally insured or guaranteed mortgage loans. At present, such guaranteed securities programs exist for level payment single family loans, mobile home loans, residential project loans, and project construction loans. The new program will provide for the inclusion of single family mortgages insured under section 245 of the National Housing Act, and known as Graduated Payment Mortgages, in mortgage loan pools backing securities issuances. Graduated Payment Mortgages have amortization schedules that provide for annual increases in the monthly installments in the early years of the mortgage. The eligibility of such loans for the securities issuances will substantially enhance the marketability of such loans. This in turn will increase the availability of loan funds for these innovative mortgages and should help maintain interest rates on such loans at reasonable rates.

It is proposed that Part 390 be amended to redesignate existing Sub-

part C as Subpart D and to add a new Subpart C, which will provide the regulatory authority for the new program. The new program is essentially identical to the existing single family mortgage-backed securities program, except as modifications are required to accommodate the unique provisions of graduated payment loans. The specific provisions of the proposed amendments are as follows:

Section 390.40 provides that GNMA is authorized by section 306(g) of the National Housing Act to establish federally guaranteed mortgage-backed securities programs. It further provides that participants in the programs are subject to the provisions contained in the Mortgage-Backed Securities Guide (GNMA 5500.1), and to any contracts entered into by parties participating in the programs.

Section 390.41 provides that to be an eligible issuer of the new securities, an applicant must satisfy those same requirements which are presently applicable with respect to issuers of level payment single family type securities.

Section 390.42 provides that for a Graduated Payment Mortgage to be eligible for inclusion in a pool as backing for the new security, it must be insured by the Federal Housing Administration pursuant to section 245 of the National Housing Act. The proposed rule limits the eligibility of such loans to those mortgages that have amortization schedules that provide for equal, or level, monthly installments beginning no later than the 61st scheduled monthly installment.

Section 390.43(a) provides that the securities to be issued are to be modified pass-through type securities. Such securities require the pass-through to security holders, whether or not collected by the issuer from the mortgagors, of interest scheduled to be collected on the pooled mortgages, less appropriate amounts for guaranty fees and mortgage servicing, together with scheduled principal installments and any prepayments or other early recoveries of principal on the mortgages. For Graduated Payment Mortgages, the scheduled principal payments may be "negative," in which case the outstanding securities balance will increase.

Section 390.43(b) provides that the minimum amount of each issue of securities may be no less than \$1 million, which amount is the same as in the present single family mortgage-backed securities program. This section also provides that, upon the mutual agreement of GNMA and issuers, arrangements may be made for the consolidation of securities issued under this program. This provision is intended to permit, upon the development of appropriate procedures, the consolidation of paid down pools. Such consoli-

dation has the potential for increasing the efficiency of mortgage pool administration.

Section 390.43(c) provides that the original amount of any individual security may not be less than \$25,000, as is the case under each of the other existing mortgage-backed securities programs.

Section 390.43(d) provides that the securities are freely transferable and assignable in registered form on the books of GNMA and the issuer, as is the case under each of the existing mortgage-backed securities programs.

Section 390.44 provides that the administration of the securities and the pooled mortgages shall be in accordance with the provisions applicable to existing mortgage-backed securities programs.

Section 390.45 provides that the administrator of the securities and the pooled mortgages shall be in accordance with the provisions applicable to existing mortgage-backed securities programs.

Section 390.46 provides that any failure of an issuer of securities to make required payments to securities holders in a timely manner may be deemed by GNMA to be an event of default under the guaranty agreements entered into between GNMA and the issuer. Such other failures or disabilities as GNMA may determine and may include in the guaranty agreements entered into with the issuer similarly may be deemed events of default. This section also provides that upon any declaration of default, GNMA may extinguish any right, title, or other interest of the issuer in the pooled mortgages.

Section 390.47 authorizes GNMA to impose application fees, guaranty fees, transfer fees, and such other fees as may be deemed appropriate. It is GNMA's intention to utilize the same fee structure for the new program that is applicable to the existing single family mortgage-backed securities program.

A finding of inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures.

1. It is proposed to amend 24 CFR Part 390 as follows:

#### PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Sec.

#### Subpart C—Modified Pass-Through Type Securities—Graduated Payment Mortgage

- 390.40 General.
- 390.41 Eligible issuers of securities.
- 390.42 Eligible mortgages.
- 390.43 Securities.

- Sec.
- 390.44 Pool Administration.
- 390.45 Guaranty.
- 390.46 Default.
- 390.47 Fees.

#### Subpart D—Miscellaneous Provisions

- 390.50 Audits and reports.
- 390.51 Applications.

2. It is proposed that Part 390 be amended to add a new Subpart C, Modified Pass-Through Type Securities—Graduated Payment Mortgages, as follows:

#### Subpart C—Modified Pass-Through Type Securities—Graduated Payment Mortgages

##### § 390.40 General.

This subpart provides for the guaranty by the Association of timely payment of principal and interest on modified pass-through securities based on and backed by eligible mortgages, which mortgages provide for non-level monthly installments. The Association is authorized by section 306(g) of the National Housing Act to make such guaranties. Issuance of securities under this Subpart is subject to the provisions that follow, to the further provisions contained in the Mortgage-Backed Securities Guide (GNMA 5500.1), as it shall exist and be amended or supplemented from time to time, and to the contracts entered into by the participating parties.

##### § 390.41 Eligible issuers of securities.

To be eligible to issue Modified Pass-Through Securities—Graduated Payment Mortgages, an applicant shall satisfy those requirements applicable to the issuance of modified pass-through securities based on and backed by mortgages on one- to four-family residences as provided in § 390.3 (Eligible Issuers of Securities).

##### § 390.42 Eligible mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of Graduated Payment Mortgages which are insured by the Federal Housing Administration pursuant to section 245 of the National Housing Act: *Provided*, That all such pooled mortgages shall provide for equal (level) monthly installments beginning no later than the 61st scheduled monthly installment.

##### § 390.43 Securities.

(a) *Instruments*. Securities to be issued under this Subpart shall be modified pass-through type securities, which shall provide for the payment, whether or not collected by the issuer from the mortgagors, of interest scheduled to be collected on the pooled mortgages, less appropriate amounts for guaranty fees and mortgage servicing, together with scheduled principal installments and any

prepayments or other early recoveries of principal on the mortgages. The issuer is required to make advances as necessary in connection with delinquent mortgages and mortgages for which foreclosure action has been initiated in order to maintain the required payments of interest and principal to security holders. In addition, the issuer is required to make advances from its own resources to make up in a timely manner any loss arising from the assignment or foreclosure of a mortgage contained in a pool. At any time 90 days or more after default of any pooled mortgage the issuer may, at its option, repurchaser such mortgage from the pool for an amount equal to the unpaid principal balance of the mortgage. The securities shall provide for specific maturity dates and dates upon which payments are to be made to the holders.

(b) *Issue amount*. Each issue of securities shall be in an amount no less than \$1 million. The total original face amount of any issue of securities shall not exceed the aggregate original unpaid principal balances of the mortgages in the pool. Upon mutual agreement of the Association and issuers, arrangements may be made for the consolidation of security issuances backed by similar mortgages, which securities have like interest rates and maturity dates.

(c) *Face amount*. The original face amount of any security shall not be less than \$25,000.

(d) *Transferability*. The securities are freely transferable and assignable, but only on the books and records of the Association and the issuer.

##### § 390.44 Pool Administration.

Administration of the securities and the pooled mortgages shall be in accordance with the provisions of § 390.9 (Pool Administration).

##### § 390.45 Guaranty.

With respect to Modified Pass-Through Securities—Graduated Payment Mortgages, the Association guarantees the timely monthly payment, whether or not collected, of the scheduled interest and principal installments, and any prepayments or other early recoveries of principal on the mortgages, as undertaken in the Association's guaranty appearing on the face of the instruments. The Association's guaranty is backed by the full faith and credit of the United States.

##### § 390.46 Default.

Any failure or inability of an issuer to make fixed or other payments to securities holders when due shall be deemed an event of default under the guaranty agreement entered into between the Association and the issuer. Such other failures or disabilities of

the issuer to perform any function or duty provided for in the guaranty agreement may also be deemed an event of default. Upon any default by an issuer, and payment by the Association under its guaranty, or any failure of the issuer to comply with the terms of the guaranty transaction, the Association may institute a claim against the issuer's fidelity bond, or may extinguish all right, title, or other interest of the issuer in the pooled mortgages, subject only to unsatisfied rights therein of the securities holders, by letter to the issuer making the mortgages the absolute property of the Association, or the Association may do both.

##### § 390.47 Fees.

The Association may impose application fees, guaranty fees, securities transfer fees, and such other fees as it may deem appropriate.

3. It is proposed that the current Subpart C be redesignated as Subpart D as follows:

#### Subpart D—Miscellaneous provisions

##### § 390.50 Audits and reports.

The Association may at any time audit the books and examine the records of any issuer, mortgage servicer, trustee, or agent or other person bearing on its guaranty of mortgage-backed securities, and may require periodic reports from such persons.

##### § 390.51 Applications.

Applications for guaranty should be submitted to the Association's home office located at 451 Seventh Street, SW., Washington, D.C. 20410.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 26, 1978.

JOHN H. DALTON,  
President, Government  
National Mortgage Association.

[FR Doc. 78-36277 Filed 12-28-78; 8:45 am]



[4830-01-M]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-229-76]

## INDIRECT FOREIGN TAX CREDIT FOR DIVIDENDS FROM LESS DEVELOPED COUNTRY CORPORATIONS

## Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the foreign tax credit for domestic corporate shareholders of certain foreign corporations. These regulations would conform the existing regulations to the changes made to the applicable law by the Tax Reform Act of 1976 and would affect all domestic corporations receiving dividends or deemed distributions from corporations which were less developed country corporations.

DATES: Written comments and requests for a public hearing must be delivered by February 27, 1979. The amendments are proposed to be effective for taxable years beginning after December 31, 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

## FOR FURTHER INFORMATION CONTACT:

Diane L. Renfro of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 78, 902, and 960 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1033 of the Tax Reform Act of 1976 (90 Stat. 1626) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 902 provides that a domestic corporation which receives a dividend from a foreign corporation in which it owns at least 10 percent of the voting stock, shall be deemed to have paid a portion of the foreign income taxes paid or deemed paid by the foreign corporation on or with respect to its accumulated profits. Section 960 provides that a domestic corporation which is required to include certain amounts attributable to the earnings and profits of a controlled foreign corporation in its gross income under section 951 (a) shall be deemed to have paid a portion of the foreign taxes paid or deemed paid by such corporation on or with respect to the earnings and profits so included in gross income. Section 78 provides the amount of foreign income taxes deemed paid under sections 902 and 960 shall be included in the gross income of the domestic shareholder.

## CHANGES MADE BY THE TAX REFORM ACT OF 1976

Prior to the Tax Reform Act, sections 902 and 960 contained two formulas for determining the amount of the deemed paid credit, one for less developed country corporations, the other for corporations which were not less developed country corporations. Section 1033 of the Tax Reform Act of 1976 repealed the formula for determining the amount of taxes deemed paid on an actual or deemed distribution from a less developed country corporation. Section 1033 also changed the so called gross-up rule under section 78 so that amounts deemed paid on actual or deemed distributions from less developed country corporations would be included in the gross income of a domestic corporation in a similar manner as amounts deemed paid on these distributions from corporations which were not less developed country corporations. Under prior law only taxes deemed paid on actual or deemed distributions from corporations which were not less developed country corporations were included in gross income. Section 1033 also made conforming amendments to sections 535 and 545 of the Code. The regulations under these sections have been amended accordingly.

## TRANSITIONAL RULE

Section 1033 provided for a transitional period in which certain distributions from first-tier corporations made before January 1, 1978, would have the benefit of the old rules for less developed country corporations. These proposed regulations explain this rule and provide examples of its application.

The principal author of this regulation is Diane L. Renfro of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

## ADOPTION OF AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.78-1 is amended by deleting the words "section 902(a)(1) and § 1.902-1(b)(2)" and "section 902(a)(1)" each place they appear and inserting "section 902(a) in accordance with §§ 1.902-1 and 1.902-2" in lieu thereof; and by deleting the words "section 960(a)(1)(C) and the regulations thereunder" and "section 960(a)(1)(C)" each place they appear and inserting in lieu thereof "section 960(a)(1) in accordance with § 1.960-7".

Par. 2. Section 1.535-2(a)(2)(ii) is amended by striking the words "section 902(a)(1) or section 960(a)(1)(C)" and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902-1 and 1.902-2 or section 960(a)(1) in accordance with § 1.960-7".

Par. 3. Section 1.545-2(a)(3)(ii) is amended by striking out the words "section 902(a)(1) or section 960(a)(1)(C)" and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902-1 and 1.902-2 or section 960(a)(1) in accordance with § 1.960-7".

Par. 4. Section 1.902-1 is amended as follows:

1. Paragraph (a) is amended by deleting subparagraph (6) and by redesignating subparagraphs (7) and (8) as subparagraphs (6) and (7) respectively.

2. Paragraph (b) is amended by deleting the words "or (3)" following the words "(b)(2)" in subparagraphs (1)(i) and (1)(iv); by deleting the words "section 902(a)(1)" in subparagraph (1)(iii) and inserting in place thereof "section 902(a)"; by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

3. Paragraph (c) is amended by deleting the words "and (3)" following the words "paragraph (b)(2)" and the words "or (3)" following the words "paragraph (c)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

4. Paragraph (d) is amended by deleting the words "and (3)" following the words "(c)(2)" and the words "or (3)" following the words "(d)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

5. Paragraph (e) is revised to read as set forth below.

6. Paragraph (f) is revised to read as set forth below.

7. Paragraph (j) is amended by deleting the words "or (3)" which follow the words "paragraph (b)(2)".

8. Paragraph (k) is amended as follows:

a. By deleting the words "a less developed country corporation" which follow the words "foreign corporation A" in examples (1), (3), and (5);

b. By deleting the words "sec. 902(a)(1)" in examples (1), (3), and (5), and inserting in place thereof "sec. 902(a)";

c. By revising example (2) to read as set forth below;

d. By deleting the words "sec. 902(b)(1)(A)" in example (3) and inserting in place thereof the words "sec. 902(b)(1)";

e. By deleting example (4);

f. By redesignating "Example (5)" as "Example (4)";

g. By deleting the words "a less developed country corporation," which follow the words "foreign corporation B" and which follow the words "foreign corporation C" in example (4) as redesignated;

h. By deleting example (6);

i. By deleting each reference to the date "1978" as it appears in examples (1), (3), and (4) (as redesignated) and inserting in place thereof "1978";

j. By deleting each reference to the date "1973" or "1974" as it appears in example (4) as redesignated, and inserting in place thereof the date "1976" or "1977" respectively.

9. Paragraph (l) is amended by deleting the word "This" at the beginning of the first sentence and inserting in place thereof the words "Except as provided in § 1.902-2, this".

The revised provisions read as follows:

§ 1.902-1 Credit for domestic corporate shareholder of a foreign corporation.

(b) Domestic shareholder owning stock in a first-tier corporation. . . .

(2) Amount of foreign taxes deemed paid by a domestic shareholder. To the extent dividends are paid by a first-tier corporation to its domestic shareholder out of accumulated profits, as defined in paragraph (e) of this section, for any taxable year, the domestic shareholder shall be deemed to have paid the same proportion of any foreign income taxes paid, accrued or deemed, in accordance with paragraph (c)(2) of this section to be paid by such first-tier corporation on or with respect to such accumulated profits for such year which the amount of such dividends (determined without regard to the gross-up under section 78) bears to the amount by which such accumu-

lated profits exceed the amount of such taxes (other than those deemed, under paragraph (c)(2) of this section, to be paid). For determining the amount of foreign income taxes paid or accrued by such first-tier corporation on or with respect to the accumulated profits for the taxable year of such first-tier corporation, see paragraph (f) of this section.

(c) First-tier corporation owning stock in a second-tier corporation. . . .

(2) Amount of foreign taxes deemed paid by a first-tier corporation. A first-tier corporation which receives dividends in any taxable year from its second-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid, accrued, or deemed, in accordance with paragraph (d)(2) of this section, to be paid by its second-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the second-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the second-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such second-tier corporation on or with respect to the accumulated profits for the taxable year of such second-tier corporation, see paragraph (f) of this section.

(d) Second-tier corporation owning stock in a third-tier corporation. . . .

(2) Amount of foreign taxes deemed paid by a second-tier corporation. For purposes of applying paragraph (c)(2) of this section to a first-tier corporation, a second-tier corporation which receives dividends in its taxable year from its third-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid or accrued by its third-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the third-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the third-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such third-tier corporation on or with respect to the accumulated profits for the taxable year of such third-tier corporation, see paragraph (f) of this section.

(e) Determination of accumulated profits of a foreign corporation. The accumulated profits for any taxable year of a first-tier corporation and the accumulated profits for any taxable year of a second-tier or third-tier cor-

poration, which are taken into account in applying paragraph (c)(2) or (d)(2) of this section with respect to such first-tier corporation, shall be the sum of—

(1) The earnings and profits of such corporation for such year, and

(2) The foreign income taxes imposed on or with respect to the gains, profits, and income to which such earnings and profits are attributable.

(f) Taxes paid on or with respect to accumulated profits of a foreign corporation. For purposes of this section, the amount of foreign income taxes paid or accrued on or with respect to the accumulated profits of a foreign corporation for any taxable year shall be the entire amount of the foreign income taxes paid or accrued for such year on or with respect to such gains, profits, and income. For purposes of this paragraph (f), the gains, profits, and income of a foreign corporation for any taxable year shall be determined after reduction by any income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, and income by the United States.

## (k) Illustrations. . . .

Example (2). The facts are the same as in example (1), except that M Corporation also owns all the one class of stock of foreign corporation B which also uses the calendar year as the taxable year. Corporation B has accumulated profits, pays foreign income taxes, and pays dividends for 1978 as summarized below. For 1978, M Corporation is deemed under paragraph (b)(2) of this section, to have paid \$20 of the foreign income taxes paid by A Corporation for 1978 and to have paid \$50 of the foreign income taxes paid by B Corporation for 1978; and includes \$70 in gross income as a dividend under section 78, determined as follows:

| B CORPORATION                                                                                                |       |
|--------------------------------------------------------------------------------------------------------------|-------|
| Gains, profits and income                                                                                    | \$200 |
| Foreign income taxes imposed on or with respect to gains, profits, and income                                | 100   |
| Accumulated profits                                                                                          | 200   |
| Foreign income taxes paid by B Corp. on or with respect to accumulated profits                               | 100   |
| Accumulated profits in excess of foreign income taxes                                                        | 100   |
| Dividends paid to M Corp.                                                                                    | 50    |
| Foreign income taxes of B Corporation deemed paid by M Corporation under section 902(a) (\$100 - \$50/\$100) | 50    |
| M CORPORATION                                                                                                |       |
| Foreign income taxes deemed paid under sec. 902(a):                                                          |       |
| Taxes of A Corp. (from example (1))                                                                          | \$20  |
| Taxes of B Corp. (as determined above)                                                                       | 50    |
| Total                                                                                                        | 70    |
| Foreign income taxes included in gross income under sec. 78 as a dividend:                                   |       |
| Taxes of A Corp. (from example (1))                                                                          | 20    |
| Taxes of B Corp.                                                                                             | 50    |
| Total                                                                                                        | 70    |



Par. 5. Section 1.902-2 is revised to read as set forth below.

§ 1.902-2 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

(a) *In general.* If a domestic shareholder receives a distribution from a first-tier corporation before January 1, 1978, in a taxable year of the domestic shareholder beginning after December 31, 1964, which is attributable to accumulated profits of the first-tier corporation for a taxable year beginning before January 1, 1976, in which the first-tier corporation was a less developed country corporation (as defined in 26 CFR § 1.902-2 rev. as of April 1, 1978), then the amount of the credit deemed paid by the domestic shareholder with respect to such distribution shall be calculated under the rules relating to less developed country corporations contained in (26 CFR § 1.902-1 rev. as of April 1, 1978).

(b) *Combined distributions.* If a domestic shareholder receives a distribution before January 1, 1978, from a first-tier corporation, a portion of which is described in paragraph (a) of this section, and a portion of which is attributable to accumulated profits of the first-tier corporation for a year in which the first-tier corporation was not a less developed country corporation, then the amount of taxes deemed paid by the domestic shareholder shall be computed separately on each portion of the dividend. The taxes deemed paid on that portion of the dividend described in paragraph (a) shall be computed as specified in paragraph (a). The taxes deemed paid on that portion of the dividend described in this paragraph (b), shall be computed as specified in § 1.902-1.

(c) *Distributions of a first-tier corporation attributable to certain distributions from second- or third-tier corporations.* Paragraph (a) shall apply to a distribution received by a domestic shareholder before January 1, 1978, from a first-tier corporation out of accumulated profits for a taxable year beginning after December 31, 1975, if:

(1) The distribution is attributable to a distribution received by the first-tier corporation from a second- or third-tier corporation in a taxable year beginning after December 31, 1975,

(2) The distribution from the second- or third-tier corporation is made out of accumulated profits of the second- or third-tier corporation for a taxable year beginning before January 1, 1976, and

(3) The first-tier corporation would have qualified as a less developed country corporation under section

902(d) (as in effect on December 31, 1975), in the taxable year in which it received the distribution.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

*Example (1).* M, a domestic corporation owns all of the one class of stock of foreign corporation A. Both corporations use the calendar year as the taxable year. A Corporation pays a dividend to M Corporation on January 1, 1977, partly out of its accumulated profits for calendar year 1976 and partly out of its accumulated profits for calendar year 1975. For 1975 A Corporation qualified as a less developed country corporation under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (a) and (b) of this section to have paid \$63 of foreign income taxes paid by A Corporation on or with respect to its accumulated profits for 1976 and 1975 and M Corporation includes \$36 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

| 1976                                                                                                                 |          |
|----------------------------------------------------------------------------------------------------------------------|----------|
| Gains, profits, and income of A Corp. for 1976.....                                                                  | \$120.00 |
| Foreign income taxes imposed on or with respect to such gains, profits, and income.....                              | 36.00    |
| Accumulated profits.....                                                                                             | 120.00   |
| Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)..... | 36.00    |
| Accumulated profits in excess of foreign income taxes.....                                                           | 84.00    |
| Dividend to M Corp. out of 1976 accumulated profits.....                                                             | 84.00    |
| Foreign income taxes of A for 1976 deemed paid by M Corp. (\$84/\$84 × \$36)                                         | 36.00    |
| Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp. ....               | 36.00    |

| 1975                                                                                                               |          |
|--------------------------------------------------------------------------------------------------------------------|----------|
| Gains, profits, and income of A Corp. for 1975.....                                                                | \$257.14 |
| Foreign income taxes imposed on or with respect to such gains, profits, and income.....                            | 77.14    |
| Accumulated profits.....                                                                                           | 180.00   |
| Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (\$77.14 × \$180/\$257.14)..... | 54.00    |
| Dividends paid to M Corp. out of accumulated profits of A Corp. for 1975.....                                      | 90.00    |
| Foreign income taxes of A Corp. for 1975 deemed paid by M Corp. (\$54 × \$90/\$180).....                           | 27.00    |
| Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp. ....             | 0        |

*Example (2).* The facts are the same as in example (1), except that the distribution from A Corporation to M Corporation on January 1, 1977, was from accumulated profits of A Corporation for 1976. A Corporation's accumulated profits for 1976 were made up of income from its trade or business, and a dividend paid by B, a second-tier corporation in 1976. The dividend from B Corporation to A Corporation was from accumulated profits of B Corporation for 1975. A Corporation would have qualified as a less developed country corporation for 1976 under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (b) and (c)

of this section to have paid \$543 of the foreign taxes paid or deemed paid by A Corporation on or with respect to its accumulated profits for 1976, and M Corporation includes \$360 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

|                                                                                                                            |         |
|----------------------------------------------------------------------------------------------------------------------------|---------|
| Total gains, profits, and income of A Corp. for 1976.....                                                                  | \$1,500 |
| Gains and profits from business operations.....                                                                            | 1,200   |
| Gains and profits from dividend A Corp. received in 1976 from B Corp. out of accumulated profits of B Corp. for 1975.....  | 300     |
| Foreign taxes imposed on or with respect to such profits and income.....                                                   | 450     |
| Foreign taxes paid by A Corp. attributable to gains and profits from A Corp.'s business operations.....                    | 360     |
| Foreign taxes paid by A Corp. attributable to dividend from B Corp. in 1976.....                                           | 90      |
| Dividends from A Corp. to M Corp. on Jan. 1, 1977.....                                                                     | 1,050   |
| Portion of dividend attributable to gains and profits of A Corp. from business operations (\$1,200/\$1,500 × \$1,050)..... | 840     |
| Portion of dividends attributable to gains on profits of A Corp. from dividend from B Corp. (\$300/\$1,500 × \$1,050)..... | 210     |

(a) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on A Corp.'s gains and profits for 1976 from business operations.*

|                                                                                                                      |         |
|----------------------------------------------------------------------------------------------------------------------|---------|
| Gains, profits, and income of A Corp. from business operations.....                                                  | \$1,200 |
| Foreign income taxes imposed on or with respect to gains, profits, and income.....                                   | 360     |
| Accumulated profits.....                                                                                             | 1,200   |
| Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)..... | 360     |
| Accumulated profits in excess of foreign income taxes.....                                                           | 840     |
| Dividend to M Corp. ....                                                                                             | 840     |
| Foreign taxes of A Corp. deemed paid by M Corp. (\$360 × \$840/\$840).....                                           | 360     |
| Foreign taxes included in gross income of M Corp. under sec. 78 as a dividend.....                                   | 360     |

(b) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on portion of the dividend attributable to B Corp.'s accumulated profits for 1975.*

|                                                                                                             |       |
|-------------------------------------------------------------------------------------------------------------|-------|
| B Corp. (second-tier corporation):                                                                          |       |
| Gains, profits, and income for calendar year 1975.....                                                      | 1,000 |
| Foreign income taxes imposed on or with respect to gains, profits, and income.....                          | 400   |
| Accumulated profits.....                                                                                    | 600   |
| Foreign income taxes paid by B Corp. on or with respect to its accumulated profits (\$400 × 600/1,000)..... | 240   |
| Dividend to A Corp. in 1976.....                                                                            | 300   |
| Foreign taxes of B Corp. for 1975 deemed paid by A Corp. (\$240 × 300/\$600).....                           | 120   |

A Corp. (first-tier corporation):

|                                                                                                               |     |
|---------------------------------------------------------------------------------------------------------------|-----|
| Gains, profits, and income for 1976 attributable to dividend from B Corp.'s accumulated profits for 1975..... | 300 |
|---------------------------------------------------------------------------------------------------------------|-----|

|                                                                                                                                        |     |
|----------------------------------------------------------------------------------------------------------------------------------------|-----|
| Foreign income taxes imposed on or with respect to such gains, profits, and income.....                                                | 90  |
| Accumulated profits.....                                                                                                               | 210 |
| Foreign taxes paid by A Corp. on or with respect to such accumulated profits (\$90 × \$210/\$300).....                                 | 63  |
| Foreign income taxes paid and deemed to be paid by A Corp. for 1976 on or with respect to such accumulated profits (\$120 + \$63)..... | 183 |
| Dividend paid to M Corp. attributable to dividend from B Corp. out of accumulated profits for 1975.....                                | 210 |
| Foreign taxes of A Corp. deemed paid by M Corp. (\$183 × \$210/\$210).....                                                             | 183 |
| Amount included in gross income of M Corp. under sec. 78.....                                                                          | 0   |

Par. 6. Section 1.960-1 is amended as follows:

1. Paragraph (b) is amended by deleting subparagraph (4).

2. Paragraph (c) is amended as follows:

a. By revising subparagraph (2) (i) to read as set forth below;

b. By deleting subparagraph (2) (ii);

c. By deleting the words "not a less developed country corporation" which follows the words "foreign corporation A" in examples (1), (3), (5), and (6) of subparagraph (4);

d. By deleting the words "section 960 (a) (1) (C)" or "sec. 960 (a) (1) (C)" each place they appear in examples (1), (3), (5), and (6) of subparagraph (4) and inserting in place thereof "section 960 (a) (1)" or "sec. 960 (a) (1)";

e. By deleting example (2) and example (4) of subparagraph (4);

f. By redesignating "Example (3)" as "Example (2)", "Example (5)" as "Example (3)", "Example (6)" as "Example (4)"; and

g. By deleting the words "not a less developed country corporation" which follow the words "corporation B" in example (3) as redesignated.

h. By deleting the date "1965" each place it appears in example (1) and examples (2), (3), and (4) as redesignated and inserting in lieu thereof "1978".

3. Paragraph (e) is deleted.

4. Paragraphs (f), (g), and (h) are redesignated as paragraphs (e), (f), and (g) respectively.

5. Paragraph (i) is amended by redesignating it paragraph (h); by deleting the words "section 960 (a) (1) (C)" in subparagraph (1) (ii) and inserting in place thereof "section 960 (a) (1)"; by deleting the words "and A Corporation is not a less developed country corporation for 1965" following the words "taxable year" in the example contained in subparagraph (3); by deleting the words "section 960 (a) (1) (C)" each place they appear in that example and inserting in place thereof "section 960 (a) (1)"; and by deleting the date "1965" each place it appears in that example and inserting in place thereof "1978".

§ 1.960-1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

(c) *Amount of foreign income taxes deemed paid by domestic corporation in respect of earnings and profits of foreign corporation attributable to amount included in income under section 951—(1) In general.* \* \* \*

(2) *Taxes paid or accrued on or with respect to earnings and profits of foreign corporation.* For purposes of subparagraph (1) of this paragraph, the foreign income taxes paid or accrued by a first-tier corporation or its second-tier corporation, as the case may be, on or with respect to its earnings and profits for its taxable year shall be the total amount of the foreign income taxes paid or accrued by such foreign corporation for such taxable year.

§ 1.960-2 (Amended).

Par. 7. Paragraph (e) of § 1.960-2 is amended as follows:

1. The words "examples (7) and (8)" in the first sentence are deleted and the words "examples (6) and (7)" are inserted in place thereof.

2. Example (2) is deleted.

3. Examples (3), (4), (5), (6), (7), and (8) are redesignated as examples (2), (3), (4), (5), (6), and (7), respectively.

4. The words "not a less developed country corporation" which follow the words "foreign corporation A" in example (1), and examples (2), (3), (4), (5), (6), and (7) as redesignated are deleted.

5. The words "section 960(a)(1)(C)", or "sec. 960(a)(1)(C)", or "section 902(a)(1)" or "sec. 902(a)(1)" are deleted each place they appear in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the words "section 960(a)(1)" or "sec. 960(a)(1)" or "section 902(a)" or "sec. 902(a)" are inserted in place thereof respectively.

6. The date "1965" is deleted each place it appears in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the date "1978" is inserted in place thereof.

§ 1.960-3 (Amended)

Par. 8. Section 1.960-3 is amended by deleting the words "section 960(a)(1)(C)" and "section 902(a)(1)" each place they appear and inserting in place thereof "section 960(a)(1)" or "section 902(a)" respectively; by deleting the words "not a less developed country corporation" following the words "corporation A" in examples (1) and (2) of paragraph (c); and by deleting the date "1965" each place it ap-

pears in examples (1) and (2) of paragraph (c) and inserting in lieu thereof "1978".

§ 1.960-4 (Amended)

Par. 9. Paragraph (f) of § 1.960-4 is amended by deleting example (4); by deleting the words "not a less developed country corporation" which follow the words "corporation A" in examples (1) and (3); by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear in examples (1), (2), and (3), and inserting in place thereof "section 960(a)(1)" or "section 960(a)(1)" respectively; by deleting "section 904(d)" each place it appears in example (2) and inserting in place thereof "section 904(c)"; and by deleting the dates "1962", "1963", "1964", "1965", "1966", and "1967" each place they appear in examples (1), (2), and (3), and inserting in place thereof "1975", "1976", "1977", "1978", "1979", and "1980" respectively.

§ 1.960-5 (Amended)

Par. 10. Paragraph (b) of § 1.960-5 is amended by deleting the words "not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" and inserting the words "section 960(a)(1)" in place thereof; and by deleting the dates "1965" and "1966" each place they appear and inserting in place thereof "1978" and "1979" respectively.

§ 1.960-6 (Amended)

Par. 11. Paragraph (b) of § 1.960-6 is amended by deleting the words "not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear and inserting in place thereof the words "section 960(a)(1)" or "sec. 960(a)(1)" respectively; by deleting the dates "1965" and "1966" each place they appear and inserting in lieu thereof "1978" and "1979" respectively.

Par. 12. Section 1.960-7 is added immediately after § 1.960-6 to read as follows:

§ 1.960-7 Effective dates.

(a) *General rule.* Except as provided in paragraph (b), the rules contained in §§ 1.960-1—1.960-6 shall apply to taxable years of foreign corporations beginning after December 31, 1962, and taxable years of U.S. corporate shareholders within which or with which the taxable year of such foreign corporation ends.

(b) *Exception for less developed country corporations.* If for any taxable year beginning after December 31, 1962, and before January 1, 1976, a first tier foreign corporation qualified



as a less developed country corporation as defined in 26 CFR 1.902-2 revised as of April 1, 1978, the rules pertaining to less developed country corporations contained in 26 CFR 1.960-1-1.960-6 revised as of April 1, 1978, shall apply to any amounts required to be included in gross income under section 951 for such taxable year.

JEROME KURTZ,  
Commissioner of Internal Revenue.  
[FR Doc. 78-36193 Filed 12-28-78; 8:45 am]

## [4830-01-M]

[26 CFR Part 1]

[LR-207-78]

## BAD DEBT RESERVES OF THRIFT INSTITUTIONS

## Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed amendment to regulations relating to additions to reserves for losses on loans of mutual savings banks, domestic building and loan associations, and cooperative banks. Existing regulations were published on May 18, 1978. The amendment would modify a provision of the existing regulations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 27, 1979. The amendment is proposed to be effective for net operating losses that arise in taxable years beginning after December 31, 1977.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, (LR-207-78), Washington, D.C. 20224.

## FOR FURTHER INFORMATION CONTACT:

Lawrence M. Axelrod of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free number).

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 593 of the Internal Revenue Code of 1954. These amendments are proposed to modify existing regulations § 1.593-6A(b)(5)(vi) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Existing regulations under section 593, as amended by section 432(a) of the Tax Reform Act of 1969, were published in the FEDERAL REGISTER on May 18, 1978 (43 FR 21453). Certain provisions of the existing regulations were made effective for taxable years beginning after December 31, 1977, to prevent hardship which could result if taxpayers were required to file amended returns for prior years. However, it was never intended that a net operating loss which arises in taxable years beginning after that date could be carried back to a prior taxable year without an adjustment to the prior year's percentage-of-taxable-income bad debt deduction. To the extent that the existing regulations do not reflect this decision, the proposed amendment would correct the regulations.

## COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

## DRAFTING INFORMATION

The principal author of these proposed regulations is Lawrence M. Axelrod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

## PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.593-6A [Amended]

Section 1.593-6A(b)(5)(vi) is amended by deleting the words "to such year under section 172" and inserting in their place the words "to such year from a taxable year beginning before January 1, 1978".

JEROME KURTZ,  
Commissioner of  
Internal Revenue.

[FR Doc. 78-36196 Filed 12-26-78; 9:31 am]

## [4830-01-M]

[26 CFR Part 1]

## AMORTIZATION OF EXPERIENCED GAINS BY PENSION PLANS FUNDED BY GROUP DEFERRED ANNUITY CONTRACTS

## Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the determination of actuarial cost under the minimum funding standards. The proposed regulations implement provisions of the Employee Retirement Income Security Act of 1974. The regulations would provide the public with guidance needed to comply with that Act and would affect defined benefit pension plans funded by group deferred annuity contracts.

DATES: Written comments and requests for public hearing must be delivered or mailed by February 27, 1979. The amendments are proposed to be effective generally for plan years beginning after 1975, but earlier (or later) in the case of some plans as provided by the Employee Retirement Income Security Act of 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

## FOR FURTHER INFORMATION CONTACT:

Thomas F. Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3589).

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(b)(3) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1013 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914) and are to be issued under the authority of sections 412 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 914 and 68A Stat. 917; 26 U.S.C. 412 and 7805).

The proposed regulations contained in this document will also apply for purposes of section 302 of ERISA (88 Stat. 869).

Section 412 of the Internal Revenue Code of 1954, contained in section 1013

of ERISA, provides minimum funding requirements with respect to certain pension plans. These requirements include the maintenance of a minimum funding standard account. Annually under the account the normal cost of the plan and certain amortization amounts are charged and contributions to the plan and certain other amortization amounts are credited.

In general, this regulation contains specific rules regarding plans funded solely through a group deferred annuity contract. The regulation treats dividends, rate credits, and credits for forfeitures as an actuarial or experienced gain, to be amortized over subsequent plan years through credits to the funding standard account under section 412(b)(3)(B)(ii).

In response to taxpayer inquiries regarding the unique nature of plans funded through a group deferred annuity contract, this regulation is being proposed separately from other regulations that will be proposed relating to the minimum funding standard account.

## COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments are available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. However, it is anticipated that any public hearing will be deferred until the issuance of further proposed regulations regarding section 412. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

## DRAFTING INFORMATION

The principal author of these proposed regulations was Thomas F. Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

## PROPOSED AMENDMENTS TO THE REGULATIONS

The Income Tax Regulations, 26 CFR Part 1, are amended by adding in the appropriate place the following new section:

§ 1.412(b)(3)-1 Amortization of experience gains in connection with group deferred annuity contracts.

(a) *Experience gain treatment.* Dividends, rate credits, and credits for forfeitures arising in a plan described in paragraph (b) of this section are experience gains described in section 412(b)(3)(B)(ii) (relating to amortization of experience gains).

(b) *Plan.* A plan is described in this paragraph (b) if—

(1) The plan is funded solely through a group deferred annuity contract,

(2) The annual single premium required under the contract for the purchase of the benefits accruing during the plan year is treated as the normal cost of the plan for that year, and

(3) The amount necessary to pay in equal annual installments, over the appropriate amortization period, an amount equal to the single premium necessary to provide all past service benefits not initially funded, together with interest thereon, is treated as the annual amortization amount determined under section 412(b)(2)(B)(i), (ii) or (iii).

JEROME KURTZ,  
Commissioner of  
Internal Revenue.

[FR Doc. 78-36051 Filed 12-28-78; 8:45 am]

## [4830-01-M]

[26 CFR Part 1]

[LR-207-78]

## BAD DEBT RESERVES OF THRIFT INSTITUTIONS

## Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to bad debt reserves of thrift institutions. The subject of the public hearing is proposed regulations under section 593 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the FEDERAL REGISTER.

DATES: The public hearing will be held on March 6, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by February 27, 1979.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-207-78), Washington, D.C. 20224.

## FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 593 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the FEDERAL REGISTER.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by February 27, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m. An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

ROBERT A. BLEY,  
Director, Legislation and  
Regulations Division.

[FR Doc. 78-36195 Filed 12-26-78; 9:31 am]

## [4830-01-M]

[26 CFR Part 20]

[LR-164-74]

## DEDUCTIBILITY OF CERTAIN ATTORNEYS' FEES INCURRED BY BENEFICIARIES

## Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed amendment to the Estate



Tax Regulations relating to the deductibility of administration expenses by an estate. The amendment would clarify the regulations relating to the deduction of attorneys' fees incurred by beneficiaries. The regulation will affect certain taxpayers filing estate tax returns.

**DATE:** Written comments and requests for a public hearing must be delivered or mailed by February 27, 1979. The regulations are proposed to be effective from the date of publication of this document in the FEDERAL REGISTER.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (LR-164-74), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:**

Robert B. Coplan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3287) (Not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### BACKGROUND

This document contains a proposed amendment to the Estate Tax Regulations (26 CFR Part 20) under section 2053 of the Internal Revenue Code of 1954. The amendment is proposed to clarify paragraphs (a) and (c)(3) of § 20.2053-3 of the regulations, and is to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

#### IN GENERAL

The proposed amendment would revise paragraph (c)(3) of § 20.2053-3, which prohibits, in all cases, the deduction of attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests.

The revision of paragraph (c)(3) of § 20.2053-3 reflects the decision of the Treasury Department to test the deductibility of attorneys' fees incurred by beneficiaries under the general principles of § 20.2053-3(a). That section provides that expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees or devisees, may not be deducted as expenses of administration. Thus, like any other expense, an attorney's fee incurred by a beneficiary that is not essential to the proper settlement of the estate will not be deductible, even if it is approved by a probate court as an expense payable or reimbursable by the estate.

#### COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

#### DRAFTING INFORMATION

The principal author of these proposed regulations is Robert B. Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

#### PROPOSED AMENDMENT TO THE REGULATIONS

The proposed amendment to 26 CFR Part 20 is as follows:

**PARAGRAPH 1.** Paragraph (c)(3) of § 20.2053-3 is revised to read as follows:

§ 20.2053-3 Deduction for expenses of administering estate.

(c) *Attorney's fees.* \* \* \*

(3) Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section.

JEROME KURTZ,  
Commissioner of  
Internal Revenue.

[FR Doc. 78-36194 Filed 12-28-78; 8:45 am]

[4510-29-M]

#### DEPARTMENT OF LABOR

[29 CFR Part 2520]

#### PENSION AND WELFARE BENEFIT PROGRAMS

Rules and Regulations for Reporting and Disclosure, Plan Description Requirements, Proposed Elimination of Form EBS-1, Extension of Comment Period

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Extension of comment period on proposed rule.

**SUMMARY:** On November 21, 1978, notice was published in the FEDERAL REGISTER (43 FR 54268) of a proposed revision to final regulations relating to the filing of a plan description under the Employee Retirement Income Security Act of 1974. The revision, if adopted, would eliminate the requirement that employee benefit plans file a plan description form EBS-1 with the Department of Labor.

The November 21, 1978 notice provided a 45-day comment period (expiring on January 5, 1979) to permit interested persons to submit comments concerning the proposal. In order to provide additional time for the submission of public comments, the comment period is hereby extended to January 22, 1979.

**DATE:** Comments concerning the proposed revision are due on or before January 22, 1979.

**ADDRESSES:** Written data, views, or arguments concerning any part or all of the proposed revision should be submitted to Proposed Elimination of Form EBS-1, Room C-4528, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20218.

All written submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20218.

**FOR FURTHER INFORMATION CONTACT:**

Miriam Freund, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20218, 202-523-7901. (This is not a toll-free number.)

Signed at Washington, D.C. this 26th day of December, 1978.

IAN D. LANOFF,  
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-36330 Filed 12-28-78; 8:45 am]

[6730-01-M]

#### FEDERAL MARITIME COMMISSION

[46 CFR Part 509]

[Docket No. 78-56]

#### ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES ATLANTIC AND GULF/EUROPEAN TRADES

Proposed Rulemaking

**AGENCY:** Federal Maritime Commission.

#### ACTION: Proposed Rule.

**SUMMARY:** The Federal Maritime Commission proposes to enact a rule pursuant to section 19(1)(b) of the Merchant Marine Act of 1920 (46 U.S.C. 876(1)(b)) in order to adjust or meet conditions unfavorable to shipping in the foreign trade of the United States which may have arisen from possible illegal acts, rates, and/or practices of the Baltic Shipping Company. This rule proposes to suspend, reject, or cancel tariffs filed with the Commission by Baltic Shipping Company because of the Company's failure to provide certain information and further assurances to the Commission to establish that these possible acts, rates, and/or practices do not exist, and do not constitute conditions unfavorable to the foreign trade of the United States.

**DATES:** Comments (original and 15 copies) January 22, 1979.

**ADDRESS:** Send comments to: Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573.

**FOR FURTHER INFORMATION CONTACT:**

Joseph C. Polking, Assistant Secretary, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573 (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 (46 U.S.C. 876), as implemented by Part 506 of the Commission's rules (46 CFR Part 506), the Federal Maritime Commission is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are generally set forth in 46 CFR 506.3. Among these are conditions which preclude or tend to preclude a vessel in the foreign trade of the United States from competing in the trade on the same basis as any other vessel, those which are discriminatory or unfair as between carriers, and those which are otherwise unfavorable to shipping in the foreign trade of the United States (46 CFR 506.3(a), (c) and (d)).

The Commission has reason to believe that the Baltic Shipping Company may be engaged in a course of conduct in the United States Atlantic and

Gulf/European trades that is violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916. The Commission also has reason to believe that the Baltic Shipping Company may be placing itself beyond effective regulation by its continued failure and refusal to comply fully with investigative orders issued by the Commission.<sup>1</sup>

The Commission has concluded that each of these conditions, i.e., Baltic's possible violations of the Shipping Act, and Baltic's failure to comply with investigative orders, if it exists, constitutes a condition unfavorable to shipping in the foreign trade of the United States.

#### A. POSSIBLE SHIPPING ACT VIOLATIONS

On April 17, 1978, the Commission issued an Order to Baltic to produce certain information pertaining to its rates and practices in the foreign commerce of the United States. This Order was issued pursuant to section 21 of the Shipping Act, 1916, to investigate the following suspected activities of Baltic: (1) Massive misrating in the U.S. Gulf Coast/North Europe trades; (2) entering into unfiled agreements with other ocean carriers subject to section 15 of the Shipping Act, 1916, pertaining to equipment sharing; and (3) non-compliance with its tariff provisions concerning space charters.<sup>2</sup>

The purpose of the section 21 Order was to determine the extent of these activities, if any, and whether they are continuing. If these activities are still occurring, they are not only violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916,<sup>3</sup> but are also unfa-

<sup>1</sup>These investigative orders seek information which is critical to a Commission determination as to whether or not Baltic is engaged in practices violative of the Shipping Act, 1916.

<sup>2</sup>These activities were suspected on the basis of information received by the Commission from various sources, including a staff examination of documents relating to Baltic shipments to U.S. Gulf ports.

<sup>3</sup>Misrating of cargo, especially if it occurs intentionally and on a large scale, can be an effective form of illegal rebating to shippers. If some shippers, cargo, or ports are favored with lower rates through misrating, while other similarly situated shippers, cargo or ports are not, undue preferences or advantages may result, in violation of section 16 of the Shipping Act, and unjust discriminations may result, in violation of section 17 of the Shipping Act. To the extent that misrating results in a different charge than would be applicable if the correct tariff item on file with the Commission were used, section 18 of the Shipping Act is violated. To the extent that Baltic has entered into agreements or cooperative working arrangements with other carriers subject to section 15 of the Shipping Act without first filing such agreements or arrangements for approval by the Commission, Baltic has violated section 15 of the Shipping Act. Non-compliance with tariff provisions is violative of section 18 of the Shipping Act.

favorable to shipping in the foreign trade because they would put Baltic at an unfair competitive advantage over other carriers not engaging in such activities. If these activities are occurring, or have occurred, and if they remain unchecked, other carriers in the foreign trades will be tempted to engage in similar activity on a large scale.

#### B. NONCOMPLIANCE WITH INVESTIGATIVE ORDER

Baltic has failed repeatedly to comply fully with the Commission's April 17, 1978 Investigative Order.<sup>4</sup> In doing so, Baltic is withholding information essential to an adequate investigation of Baltic's activities in the foreign commerce of the United States and available to the Commission only through Baltic. If the Commission is unable to obtain adequate information from Baltic concerning its activities in U.S. foreign commerce, the Commission cannot effectively carry out its statutory mandate to regulate the activities of Baltic as an ocean carrier in U.S. foreign commerce. Baltic's repeated failure to provide information places it at an unfair competitive advantage over other carriers because Baltic can, through non-disclosure of information, more easily avoid the consequences, under the Shipping Act, 1916, and other United States laws, of engaging in lucrative but unlawful competitive or anti-competitive practices. If Baltic is not brought within effective regulation by the Commission, other carriers in the foreign trades will be tempted to place themselves beyond effective regulation by similarly failing or refusing to provide information ordered by the Commission.

#### COMMISSION ACTION

If the conditions described above exist and are allowed to continue unchecked, a severe disruption of the foreign trades of the United States would result.

To ensure that Baltic's practices in the foreign commerce of the United States can be investigated adequately, and to ensure that the Commission can effectively enforce sections 15, 16, 17 and 18 of the Shipping Act, 1916, as they apply to Baltic's activities, Baltic will be required to file certain information with the Commission. If the Commission cannot obtain this information, it will conclude that it cannot effectively regulate the activities of Baltic. If the Commission cannot regulate Baltic, it cannot adequately protect the merchant marine of the United States from unfair and illegal

<sup>4</sup>See *In Re: Baltic Shipping Company—Rates and Practices in the U.S. Gulf Coast/North Europe Trade*, (FMC Docket No. 78-36).



competition, and it cannot safeguard the foreign trade of the United States against instability, except by excluding Baltic from the foreign trade until such time as Baltic can be effectively regulated.

By letter dated November 29, 1978, the Commission notified the Secretary of State of the Commission's findings in this matter and asked the Department of State to seek diplomatic resolution of the problem. To date, the efforts of the State Department have been unavailing in producing the information needed by the Commission.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(1)(b)) and section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), the Commission proposes to enact Part 509, Title 46 CFR, as follows:

**PART 509—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES ATLANTIC AND GULF/EUROPEAN TRADES**

**Sec.**

509.1 Conditions Unfavorable to shipping in the foreign trade of the United States.

509.2 Production of information.

509.3 Rejection, suspension, or cancellation of tariffs.

**AUTHORITY:** Commission General Order No. 33 (46 CFR Part 506), section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(1)(b)), section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), and Reorganization Plan No. 7 of 1961 (75 Stat. 840).

**§ 509.1 Conditions Unfavorable to Shipping in the Foreign Trade of the United States.**

The Federal Maritime Commission has determined that the Baltic Shipping Company, also doing business as Balt-Atlantic Line, Balt-Gulf Line, and Baltic Middle East Line, (hereinafter referred to collectively as Baltic) may have created conditions unfavorable to shipping in the foreign trade of the United States by: (a) Engaging in certain suspected activities in the United States Atlantic and Gulf/European trades (hereinafter also meant to include the United States Atlantic and Gulf/Middle East trades) which may be violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916;<sup>\*</sup> and (b)

<sup>\*</sup>The suspected activities referred to herein are as follows: (1) Intentional and widespread misrating of cargo carried to and from United States Atlantic and Gulf ports in order to provide unlawful inducements or advantages to certain shippers or classes of cargo, in violation of sections 15, 17, and 18 of the Shipping Act, 1916; (2) Entering into an unknown number of unfiled agreements with other ocean carriers concerning the sharing of ocean transport equipment, in violation of section 15 of the Shipping Act; and (3) Habitual non-compliance with tariff

apparently placing itself beyond effective regulation by the Federal Maritime Commission by failing or refusing to provide information demanded by a lawful Commission Order concerning its activities in the foreign commerce of the United States.

**§ 509.2 Production of Information.**

Pursuant to § 506.11 of this Chapter (46 CFR 506.11), the Commission has determined that receipt by the Commission of the following information is necessary in order for the Commission to determine whether either or both of the conditions described in § 509.1 exist in fact or may be developing:

(a) The information sought in paragraphs (A)(3)(e), (B)(1) through (B)(3), (C)(1) and (C)(2) of the Commission's Order of April 17, 1978 concerning Baltic's rates and practices in the U.S. Gulf/North Europe Trade, as modified by its Order of May 26, 1978; (b) Duplicate bills of lading for all cargo carried by Baltic to and from United States Atlantic and Gulf ports for a twelve-month period commencing ninety (90) days from the effective date of this Part. Such bills of lading shall indicate on their face, or on an attached sheet, the tariff and tariff item number used to determine the rate assessed each item of cargo reflected on the bill of lading; and

(c) Any other information or argument Baltic wishes to submit for the Commission's consideration in determining whether the conditions described in § 509.1 exist, and whether such conditions are unfavorable to the foreign trade of the United States.

**§ 509.3 Rejection, suspension, or cancellation of tariffs.**

(a) The Commission has determined that if it does not receive all of the information described in paragraph (a) of § 509.2, and adequate assurances that it will receive, and continue to receive, the information described in paragraph (b) of § 509.2, within 30 days after the effective date of this part, then the conditions described in § 509.1 are found to exist and to be unfavorable to the foreign trade of the United States, pursuant to § 506.12 of the Commission's rules, effective 31 days from the effective date of this part.

(b) On the effective date of the finding made pursuant to paragraph (a) of this § 509.3, the following tariffs and all amendments thereto are suspended in full, until such time as the information specified in § 509.2(a) is provided, and adequate assurances are received by the Commission that the information specified in § 509.2(b) will be provided:

provisions setting forth requirements for space charters, in violation of section 18 of the Shipping Act.

I. *Baltic Shipping Company, FMC Tariff Nos. 32 and 38.*

II. *Baltic Shipping Company dba Balt-Atlantic Line, FMC Tariff Nos. 3, 4, 5, 7, 13, 14, 16, 17, 22, 23, 33, 34, 39, 43, 44, 45, 46, 47, 49, 50 and 51.*

III. *Baltic Shipping Company dba Balt-Gulf Line, FMC Tariff Nos. 36, 37, 40 and 48.*

IV. *Baltic Shipping Company dba Baltic Middle East Line, FMC Tariff No. 31.*

(c) All affected conference or rate agreement tariffs shall be amended to reflect the suspension of Baltic's participation upon the effective date of the finding made pursuant to paragraph (a) of this § 509.3. This section would suspend, as to all sailings commencing on or after the effective date of this section, all tariff rates, charges and rules as they apply to Baltic in the trades between the United States Atlantic and Gulf Coasts and Europe. Until such time as Baltic furnishes the information and assurance sought under § 509.2, any tariffs subsequently submitted by or in behalf of Baltic in the trades between United States Atlantic and Gulf Coasts and Europe are within the scope of this Part and will be rejected or suspended upon filing.

(d) Operation by Baltic under suspended, cancelled, or rejected tariffs, or any other act or omission by Baltic inconsistent with this part, the Shipping Act, 1916, or any other law of the United States or political subdivision thereof, shall subject Baltic to all applicable remedies and penalties provided by law.

By the Commission.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-36223 Filed 12-28-78; 8:45 am]

[6712-01-M]

**FEDERAL COMMUNICATIONS COMMISSION**

[47 CFR Part 73]

[Docket No. 21136]

**NATURE OF EDUCATIONAL BROADCAST STATIONS**

Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** Action taken herein extends the time for filing comments and reply comments in a proceeding involving the Commission's policy concerning the nature of educational broadcast stations. Petitioner, Public Broadcasting Service, states that the additional time is needed so that it can file more comprehensive and carefully considered comments.

**DATES:** Comments must be filed on or before January 8, 1979, and reply

comments on or before February 8, 1979.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Malickson, Broadcast Bureau, 202-632-7551.

**SUPPLEMENTARY INFORMATION:**

Adopted: December 21, 1978.

Released: December 21, 1978.

In the matter of Commission policy concerning Nature of Educational Broadcast Stations, Docket No. 21136.

1. On December 12, 1978, the Commission, by Order,<sup>1</sup> denied a request filed by the Educational Broadcasting Corporation, for an extension of time for filing comments and reply comments in the above-entitled proceeding.

2. On December 15, 1978, Public Broadcasting Service ("PBS") filed a petition for reconsideration of the Commission's Order. It contends that it filed comments in support of EBC's request for additional time but the Commission's Order contained no reference to PBS's reasons which supported EBC's motion. It states that a substantial portion of time has been devoted to the preparation of a questionnaire sent to all PBS members to obtain the information requested by the Commission. PBS asserts that in order to meet the present deadline, members of its staff, its outside counsel and secretarial staff would be required to neglect family obligations during the Christmas and New Year season. It asserts that a thirty-day extension of time will not materially delay the Commission's resolution of the proceeding but would permit PBS to file more comprehensive and carefully considered comments.

3. On the basis of the reasons indicated in PBS's petition for reconsideration, we believe that some additional time is warranted and would help to assure development of a sound and comprehensive record on which to base a decision in this proceeding. However, we believe that an extension of time to and including January 8, 1979, is sufficient for the filing of comments. Since other interested parties may wish additional time to respond to these comments, we shall extend the reply comment date the same amount of time to facilitate their submissions.

4. Accordingly, it is ordered, That the petition for reconsideration filed by Public Broadcasting Service in

<sup>1</sup>Order denying request for extension of time for filing comments and reply comments in Docket No. 21136, was released on December 14, 1978. See 43 FR 36116, August 15, 1978.

Docket No. 21136, is granted to the extent that the dates for filing comments and reply comments are extended to and including January 8, and February 8, 1979, respectively, and is denied in all other respects.

5. This action is taken pursuant to authority contained in Sections 4(i), 5(d)(1), 303(r) and 405 of the Communications Act of 1934, as amended, and §§ 0.281 and 1.106 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

[FR Doc. 78-36281 Filed 12-28-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-380; RM-3179]

**BROKEN BOW, OKLA.**

Proposed Channel (FM)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** Action taken herein proposes the assignment of Channel 292A to Broken Bow, Oklahoma, at the request of Chris Daniel. The proposed assignment would provide for a station which could render a first local aural service.

**DATES:** Comments must be received on or before February 12, 1979, and reply comments on or before March 5, 1979.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

**SUPPLEMENTARY INFORMATION:**

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Broken Bow, Oklahoma), BC Docket No. 78-380, RM-3179.

Adopted: December 12, 1978.

Released: December 21, 1978.

1. The Commission herein considers a petition for rule making<sup>1</sup> filed by Chris Daniel ("petitioner"), proposing the assignment of FM Channel 292A to Broken Bow, Oklahoma. The channel can be assigned in conformity with the minimum distance separation requirements. No responses were made to the proposal.

<sup>1</sup>Public Notice of the petition was given on August 15, 1978, Report No. 1136.

2. Broken Bow (pop. 2,980), in McCurtain County (pop. 28,642),<sup>2</sup> is located in southeastern Oklahoma, approximately 84 kilometers (52 miles) northwest of Texarkana, Texas. There is no local aural broadcast service in Broken Bow.

3. Petitioner states that Broken Bow is located in a rich timber and agricultural area which provides employment for the majority of its residents. Petitioner has submitted several letters from local businessmen stating their interest and support for the proposed FM assignment to Broken Bow.

4. In light of the above information and the fact that the proposed Channel 292A assignment would provide a first local aural broadcast service to Broken Bow, Oklahoma, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to Broken Bow, as follows:

| City                      | Channel No. |          |
|---------------------------|-------------|----------|
|                           | Present     | Proposed |
| Broken Bow, Oklahoma..... |             | 292A     |

5. Authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

**NOTE.**—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

7. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

FEDERAL COMMUNICATIONS COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the

<sup>2</sup>Population figures are taken from the 1970 U.S. Census.



Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.

[FR Doc. 78-36282 Filed 12-28-78; 8:45 am]

## [6712-01-M]

[47 CFR—PART 73]

(Docket No. 20954; RM-2684; RM-2772; RM-2982)

## TABLE OF ASSIGNMENTS OF FM BROADCAST STATION IN STAUNTON, VIRGINIA

## Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding involving proposed FM channel assignments to Staunton, Virginia. Petitioner, Augusta County Broadcasting Corporation, states that the additional time is needed so that it can undertake substantial engineering review of material filed by another party in the proceeding.

DATE: Reply comments must be received on or before January 22, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Stanley Wiggins, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Staunton, Virginia), Docket No. 20954, RM-2684, RM-2772, RM-2982.

Order extending time for filing reply comments.

Adopted: December 21, 1978.

Released: December 21, 1978.

1. On August 17, 1978, the Commission adopted a *Second Further Notice of Proposed Rule Making*, 43 Fed. Reg. 38060, proposing the assignment of Class B FM Channel 259 to Staunton, Virginia. The date for filing comments has expired and the date for filing reply comments is presently December 22, 1978. (43 FR 55428, November 28, 1978)

2. On December 12, 1978, counsel for Augusta County Broadcasting Corporation, licensee of AM Station WTON, Staunton, Virginia, filed a request for an extension of time for filing reply comments to and including January 22, 1979. Counsel states that because of the substantial engineering comments filed by WANV, Inc., a party in the proceeding, it will be necessary for its client to undertake substantial en-

gineering review in order to prepare reply comments.

3. We are of the view that the public interest would be served by this extension so that Augusta County Broadcasting Corporation may file any information which might be helpful to the Commission in reaching a decision in this matter.

4. Accordingly, IT IS ORDERED, that the date for filing reply comments in Docket No. 20954 IS EXTENDED to and including January 22, 1979.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

[FR Doc. 78-36250 Filed 12-28-78; 8:45 am]

## [3510-22-M]

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 662]

## PROPOSED AMENDMENT TO EIS/FMP FOR NORTHERN ANCHOVY FISHERY MANAGEMENT PLAN

## Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Pacific Fishery Management Council will conduct a public hearing at its January meeting to receive input on a proposed amendment to the Environmental Impact Statement/Fishery Management Plan for Northern Anchovy for the 1979-80 fishing season.

DATES: The public hearing will begin at 7:00 p.m. on January 12, 1979.

ADDRESS: The public hearing will be in the Marina Room of the Shelter Island Inn located at 2051 Shelter Island Drive, San Diego, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 SW Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

SUPPLEMENTARY INFORMATION: For the 1978-79 season, the anchovy fishery is being managed by the "Final Environmental Impact Statement and Fishery Management Plan for the Northern Anchovy Fishery" published

in the FEDERAL REGISTER on July 21, 1978 (43 FR 31651). The Council proposes to amend the plan to include a more precise statement of domestic annual harvest. The amendment would:

1. Increase the expected reduction fleet capacity from 486,000 to 891,492 short tons.

2. Establish the expected live-bait fleet capacity at 7,500 short tons.

3. Increase the expected processing capacity from 208,000 to 359,080 short tons.

4. Establish the expected domestic annual harvest at 202,000 short tons.

Copies of the proposed amendment have been mailed by the Pacific Fishery Management Council to all persons on the Council's Anchovy Plan mailing list. Additional copies are available at the Council office.

Written comments on the proposed amendment should be submitted to the Council, prior to January 26, 1979.

Signed in Washington, D.C. this 20th day of December, 1978.

JACK W. GEHRINGER,  
Deputy Assistant Administrator  
for fisheries, National Oceanic  
and Atmospheric Administration.

[FR Doc. 78-36225 Filed 12-28-78; 8:45 am]



# **notices**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-30-M]

## **DEPARTMENT OF AGRICULTURE**

Food and Nutrition Service

### **FOOD DISTRIBUTION**

Policy for States' School Year 1979 Commodity Entitlements for School Feeding Programs

The Food and Nutrition Service (FNS) is announcing the dollar value of federally donated food commodities which each State is entitled to receive during the 1979 school year for school lunch and breakfast programs authorized under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. Two separate entitlements, based on the legislative authority under which the donated foods are acquired, have been established: (1) Foods acquired by the Commodity Credit Corporation (CCC) through price-support operations and available under section 416 of the Agricultural Act of 1949, as amended; and (2) the combined entitlement for foods purchased under Section 6 of the National School Lunch Act and Section 32 of Pub. L. 74-320, as amended. The policies and considerations upon which the entitlements have been determined are discussed in the following paragraphs.

#### **GENERAL**

Planning of USDA commodity acquisition for school feeding programs is based on overall program entitlements, traditional usage, States' and schools' preferences, anticipated market conditions, and budget appropriations. Proposed purchases are consolidated into a purchase docket, which is approved by the CCC Board of Directors and the Secretary of Agriculture. Commodity purchases and allocations are made in accordance with the plans approved in this docket.

#### **OVERALL ENTITLEMENTS FOR SCHOOLS**

Commodity entitlements are determined on the basis of the estimated number of lunches and breakfasts to be served between July 1 and June 30 of each year in schools participating under regulations for the National School Lunch Program (7 CFR 210) and the School Breakfast Program (7 CFR 220), including those administered by FNS Regional Offices. The entitlements are obtained by multiply-

ing the estimated number of meals by the appropriate value of commodity assistance for each meal. The value per lunch is based on the level specified in Section 6(e) of the National School Lunch Act. The value per breakfast is determined administratively, since Section 8 of the Child Nutrition Act of 1966, which authorizes commodity donations for the School Breakfast Program, does not mandate a specified per-meal level.

Since breakfasts in the School Breakfast Program and lunches served by commodity-only schools (as that term is defined in the regulations for the National School Lunch Program) are eligible for commodity support, foods are allocated for these programs. However, neither USDA, the States, nor schools are required to maintain records to designate the specific program use for each commodity. Therefore, in order to comply with the provisions of Section 6(e), it is assumed that the full entitlement for breakfasts and for lunches served by commodity-only schools is satisfied; any shortfall in entitlement would occur in the National School Lunch Program.

Entitlements are computed early in the school year for the purpose of allocating commodities to States, and they are revised by the following May 15. Revised entitlements are based on the number of lunches and breakfasts actually served and reported to FNS by April 15. For any months not reported, the best data available to FNS at that time will be used. The April 15 cutoff date for receipt of reports permits FNS to process the data on a State by State basis to meet the May 15 deadline, and no information received after that date will be considered. The entitlements are revised in order to comply with the provisions of Section 6(b) of the National School Lunch Act. Section 6(b) of the Act requires the Secretary of Agriculture to make an estimate no later than May 15 of the value of commodities to be delivered for use in school lunch programs during the year; if the national estimated value is less than that required under Section 6(e), cash payments equal to the difference in the total programmed value and the total required value for each State must be made not later than June 15.

The entitlements for all States are totaled to give an overall national entitlement for all commodities and then

separated into (1) the Section 416 category and (2) the combined category of Sections 6 and 32.

#### **SECTION 416 CATEGORY**

The Section 416 portion of the total entitlement varies from year to year, depending on CCC inventories of price-supported commodities and on States' ability to use the types and varieties of foods available. For the 1979 school year, the Section 416 category will comprise approximately 34 percent of the overall commodity entitlement and is expected to include a minimum of 27 different cereal, grain, dairy, peanut, and oil products. Because foods in this category are expected to be available in sufficient supply to meet this portion of entitlements, any State that does not order the full amount of its Section 416 entitlement will lose the value of the unorderd foods.

When Section 416-type commodities are ordered by a State over and above its entitlement in this category, they will be considered as a bonus to that State and will not be counted against its entitlement. The bonus program has been established to assist States which can effectively utilize these types of commodities in greater quantities and help reduce CCC inventories. It is expected to remain in effect as long as large quantities of price-supported foods are available and can be properly utilized.

#### **SECTIONS 6 AND 32 CATEGORY**

Funds available under Sections 6 and 32 are used primarily to purchase nonprice-supported commodities, such as meat, poultry, fruits and vegetables, to safeguard the health and well-being of the Nation's children, to encourage the domestic consumption of nutritious food, and to help stabilize farm prices. In addition, Section 6 mandates that special emphasis be given to high-protein foods, meat, and meat alternates in providing foods for schools. Most of the commodities purchased in this category are allocated to States on a pro rata basis, but some are offered on an as-needed basis. If USDA is able to offer 100 percent of this portion of the overall entitlement on a national basis, any State that does not accept or order all of its share of the entitlement will lose the value of the offered foods. However, if the Department is not able to offer the entire

Sections 6 and 32 entitlement nationally, each State will receive cash payments equal to the difference in value between its share of this portion of the entitlement and the amount of foods in this category actually received.

#### **POLICY**

Announcement of States' commodity entitlements by category for school feeding programs will be published in the FEDERAL REGISTER each year. Publication of cash-in-lieu of commodity payments to States, if any, will also be made in the FEDERAL REGISTER. The policies for determining entitlements shown in the following tables will remain as set forth above until further notice. However, the national percentage for each category will be reevaluated each year on the basis of the types and varieties of commodities available.

*Effective date:* This notice is effective as of July 1, 1978.

*Dated:* December 21, 1978.

CAROL TUCKER FOREMAN,  
Assistant Secretary for  
Food and Consumer Services.



[3104-30-C]

| REGION/STATE                 | TOTAL<br>ENTITLEMENT | SECTION<br>416<br>ENTITLEMENT | SECTION<br>6 AND 32<br>ENTITLEMENT |
|------------------------------|----------------------|-------------------------------|------------------------------------|
| <b>NEW ENGLAND</b>           |                      |                               |                                    |
| Connecticut                  | 6,354,709            | 2,226,588                     | 4,128,121                          |
| Maine                        | 3,174,663            | 1,111,656                     | 2,063,007                          |
| Massachusetts                | 16,500,283           | 5,781,048                     | 10,719,235                         |
| New Hampshire                | 2,093,979            | 733,824                       | 1,360,155                          |
| Rhode Island                 | 1,697,390            | 595,140                       | 1,102,250                          |
| Vermont                      | 1,346,068            | 471,744                       | 874,324                            |
| <b>TOTAL</b>                 | <b>31,167,092</b>    | <b>10,920,000</b>             | <b>20,247,092</b>                  |
| <b>MID-ATLANTIC</b>          |                      |                               |                                    |
| Delaware                     | 1,516,033            | 529,000                       | 987,033                            |
| District of Columbia         | 1,545,753            | 541,696                       | 1,004,057                          |
| Maryland                     | 9,156,811            | 3,207,856                     | 5,948,955                          |
| New Jersey                   | 13,784,439           | 4,828,712                     | 8,955,727                          |
| New York                     | 35,967,182           | 12,598,664                    | 23,368,518                         |
| Pennsylvania                 | 26,637,018           | 9,327,328                     | 17,309,690                         |
| Puerto Rico                  | 10,959,469           | 3,838,424                     | 7,121,045                          |
| Virginia                     | 15,616,455           | 5,467,744                     | 10,148,711                         |
| Virgin Islands               | 303,686              | 105,800                       | 197,886                            |
| West Virginia                | 5,350,390            | 1,874,776                     | 3,475,614                          |
| <b>TOTAL</b>                 | <b>120,837,236</b>   | <b>42,320,000</b>             | <b>78,517,236</b>                  |
| <b>SOUTHEAST</b>             |                      |                               |                                    |
| Alabama                      | 13,300,838           | 4,659,600                     | 8,641,238                          |
| Florida                      | 23,561,168           | 8,250,000                     | 15,311,168                         |
| Georgia                      | 20,560,017           | 7,198,400                     | 13,361,617                         |
| Kentucky                     | 12,039,270           | 4,215,200                     | 7,824,070                          |
| Mississippi                  | 9,629,388            | 3,370,400                     | 6,258,988                          |
| North Carolina               | 21,743,759           | 7,616,400                     | 14,127,359                         |
| South Carolina               | 11,180,353           | 3,916,000                     | 7,264,353                          |
| Tennessee                    | 13,632,060           | 4,774,000                     | 8,858,060                          |
| <b>TOTAL</b>                 | <b>125,646,853</b>   | <b>44,000,000</b>             | <b>81,646,853</b>                  |
| <b>MIDWEST</b>               |                      |                               |                                    |
| Illinois                     | 23,221,225           | 8,131,500                     | 15,089,725                         |
| Indiana                      | 14,902,436           | 5,218,616                     | 9,683,820                          |
| Michigan                     | 16,947,180           | 5,937,802                     | 11,009,378                         |
| Minnesota                    | 12,329,934           | 4,318,730                     | 8,011,204                          |
| Ohio                         | 24,506,436           | 8,583,250                     | 15,923,186                         |
| Wisconsin                    | 11,280,917           | 3,950,102                     | 7,330,815                          |
| <b>TOTAL</b>                 | <b>103,188,128</b>   | <b>36,140,000</b>             | <b>67,048,128</b>                  |
| <b>WESTERN</b>               |                      |                               |                                    |
| Alaska                       | 8,641,238            | 15,089,725                    | 23,730,963                         |
| American Samoa               | 15,311,168           | 9,683,820                     | 25,000,000                         |
| Arizona                      | 13,361,617           | 11,009,378                    | 24,370,995                         |
| California                   | 7,824,070            | 8,011,204                     | 15,835,274                         |
| Guam                         | 6,258,988            | 7,330,815                     | 13,589,803                         |
| Hawaii                       | 14,127,359           | 7,264,353                     | 21,391,712                         |
| Idaho                        | 7,264,353            | 8,858,060                     | 16,122,413                         |
| Nevada                       | 8,858,060            | 8,131,500                     | 16,989,560                         |
| Oregon                       | 15,089,725           | 9,683,820                     | 24,773,545                         |
| Trust Territory              | 23,730,963           | 25,000,000                    | 48,730,963                         |
| Washington                   | 24,370,995           | 24,370,995                    | 48,741,990                         |
| <b>TOTAL</b>                 | <b>171,359,726</b>   | <b>103,188,128</b>            | <b>274,547,854</b>                 |
| <b>DEPARTMENT OF DEFENSE</b> |                      |                               |                                    |
| Europe                       | 644,291              | 229,796                       | 414,495                            |
| Japan                        | 122,510              | 43,680                        | 78,830                             |
| Okinawa                      | 18,255               | 6,524                         | 11,732                             |
| <b>TOTAL</b>                 | <b>785,057</b>       | <b>280,000</b>                | <b>505,057</b>                     |
| <b>GRAND TOTAL</b>           | <b>571,091,900</b>   | <b>200,000,000</b>            | <b>371,091,900</b>                 |

[FR Doc. 79-36123 Filed 12-28-78; 8:45 am.]

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

## NOTICES

[3410-11-M]

## Forest Service

## GILA NATIONAL FOREST GRAZING ADVISORY BOARD

## Meeting

The Gila National Forest Grazing Advisory Board will meet at 10:00 A.M., January 18, 1979 in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, New Mexico. This replaces the meeting scheduled for December 19, 1978 that was cancelled due to emergency involving weather conditions.

The agenda for this meeting is:

1. Election of Officers.
  2. Development of Bylaws.
  3. Responsibilities of the Advisory Board.
  4. Other items of general interest.
- The meeting will be open to the public.

Dated: December 19, 1978.

ROBERT M. WILLIAMSON,  
Forest Supervisor.

[FR Doc. 78-36228 Filed 12-28-78; 8:45 am.]

[3410-11-M]

## Forest Service

## WESTERN SPRUCE BUDWORM SUPPRESSION

Kaibab National Forest, Grand Canyon National Park, Coconino County, Arizona; Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the suppression of a western spruce budworm, *Choristoneura occidentalis* Freeman, epidemic on the Kaibab Plateau. The proposed action involves the entire mixed conifer type on the Kaibab National Forest and adjacent Grand Canyon National Park lands.

A meeting will be held early in the process with interested agencies such as the National Park Service, U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Arizona Department of Highways, and other State and Local Agencies.

16 U.S.C. 594-1 to 594-5 the "Forest Pest Control Act" gives the responsibility for such actions to the Forest Service for all Federal lands. Leonard A. Lindquist, the Forest Supervisor is, therefore, the responsible official, and Cary J. Price, Forest Silviculturalist, will be the team leader for the Environmental Assessment and Statement.

The Draft Environmental Statement is scheduled for completion by February 1, 1979 with a subsequent 60 day

review period and the Final Environmental Statement is scheduled for filing in April 1979. Suppression Activities are scheduled to proceed in June 1979 to take advantage of the development stage of the budworm at that time.

Comments on the Notice of Intent should be sent to Leonard A. Lindquist, Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona 86046.

LEONARD A. LINDQUIST,  
Forest Supervisor.

DECEMBER 12, 1978.

[FR Doc. 78-36301 Filed 12-28-78; 8:45 am.]

[3410-37-M]

## Office of the Secretary

## ADVISORY COMMITTEE ON MEAT AND POULTRY INSPECTION

## Reestablishment

Notice is hereby given that the Advisory Committee on Meat and Poultry Inspection is being renewed under provisions of Public Law 92-463. It was previously established pursuant to the authority of section 301(a)(4) (21 U.S.C. 661(a)(4)) of the Wholesome Meat Act (Pub. L. 90-201) and section 5(a)(4) (21 U.S.C. 454(a)(4)) of the Wholesome Poultry Products Act (Pub. L. 90-492).

It is in the public interest to reestablish the Committee on matters pertaining to meat and poultry inspection conducted by USDA and the States as required under the Federal Meat Inspection Act and the Poultry Products Inspection Act. The Committee is required for the purposes of consulting with the Secretary concerning definitions and standards of identity for meat and poultry products; concerning whether conditions under which meat or poultry products are stored and handled under the laws of a State or Territory are adequate to effectuate the purposes of the Acts; concerning whether a State or Territory has at least equal authority under its laws with respect to recordkeeping, access to facilities, registration, and control of firms handling dead, dying, disabled, or diseased carcasses; concerning whether the State inspection program is maintained in an adequate manner; concerning the development of better coordination and more uniformity among the State and Federal programs; and concerning designation of plants which clearly endanger the public health.

The Committee will be composed of persons from private and public sectors in representing scientific and public health organizations, State pro-

grams, consumers, and public interest groups.

This Committee will terminate October 6, 1980, unless renewed prior to that date.

This notice is given in compliance with OMB Circular A-63, Revised.

Dated: December 18, 1978.

JOAN S. WALLACE,  
Assistant Secretary  
for Administration.

[FR Doc. 78-36012 Filed 12-28-78; 8:45 am.]

[6320-01-M]

## CIVIL AERONAUTICS BOARD

[Order 78-12-140; Dockets 13962, 23229, 33183]

## BRITISH WEST INDIAN AIRWAYS LTD.

## Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of December, 1978.

British West Indian Airways Limited (BWIA) holds a foreign air carrier permit<sup>1</sup> authorizing: (a) foreign air transportation of persons, property, and mail over the following routes:

1. Between the coterminous points Trinidad, W.I.; Jamaica, W.I.; the Cayman Islands, W.I.; British Guiana, South America; and British Honduras, Central America; the intermediate points Barbados, W.I.; Grenada, W.I.; St. Lucia, W.I.; Antigua, W.I.; St. Kitts, W.I.; St. Thomas, Virgin Islands; San Juan, Puerto Rico; Ciudad Trujillo, Dominican Republic; Port-au-Prince, Haiti; Jamaica, W.I.; Cuba; Nassau, the Bahama Islands; and Bermuda; and the terminal point Miami, Florida;

2. Between the terminal point Barbados, W.I., and the terminal point New York, N.Y.;

3. Between the terminal point London, England; the intermediate points Shannon, Eire; Iceland; the Azores; Bermuda; Gander and Montreal, Canada; and the terminal point New York, N.Y.; and beyond New York to the terminal point Jamaica, W.I.; and

4. Between the terminal point Antigua, W.I., and the terminal point New York, N.Y.

and (b) charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

On August 9, 1962, BWIA applied for renewal of its authority to continue operations over segment 4 of its permit. This authority was to expire on October 1, 1962, unless extended by further agreement between the United

<sup>1</sup>Order E-23279, approved February 19, 1966.



States and the United Kingdom.<sup>2</sup> Prior to 1962, BWIA's permit authority was contained in the United States-United Kingdom bilateral agreement ("Bermuda I"), and BWIA was a carrier designated by the United Kingdom. In 1962, Trinidad and Tobago gained independence from the United Kingdom and acquired BWIA as its national carrier. By Exchange of Notes dated September 27 and October 8, 1962, between the United States and Trinidad and Tobago, it was agreed that the routes formerly contained in "Bermuda I" would continue to apply to operations in the Caribbean by United States and Trinidadian carriers.

In 1966, the Board amended BWIA's permit to its present form, Order E-23279, approved February 19, 1966. The Board found that BWIA met the fitness standards of the Act, and that BWIA's services would be in the public interest.

By application filed March 23, 1971, in Docket 23229, BWIA applied for an amendment to its permit. The carrier sought authority to engage in the scheduled foreign air transportation of persons, property, and mail between the terminal point St. Lucia, W.I. and the terminal point New York, New York.

By application filed on August 10, 1978 (Docket 33183), and amended on September 21, 1978, BWIA filed for amendment of its foreign air carrier permit to authorize nonstop foreign air transportation of persons, property, and mail between New York, New York and Trinidad and Tobago.<sup>3</sup>

On August 17, 1978, BWIA filed a motion to have its application in Docket 33183 handled by show cause procedures. This motion sets forth BWIA's arguments for the requested permit amendment. The airline's prime contention is that the existing permit, when interpreted properly, implicitly accords the authority now sought. The present application, then, is designed really just to make the grant explicit and resolve all doubts. In support of this argument, BWIA traces the history of its permit, noting that the authorized routes derive from a period when Trinidad and Tobago were still only parts of the British Caribbean Empire. When the Islands gained their independence in 1962, BWIA's route authority gave rise to an

<sup>2</sup>Pursuant to section 9(b) of the Administrative Procedure Act (5 U.S.C. Section 558(c)), BWIA continues to operate over segment 4.

<sup>3</sup>In this application, BWIA states that it is a citizen of the Republic of Trinidad and Tobago; that it is organized under the laws of the Republic; and that it is owned solely by the Government of Trinidad and Tobago.

<sup>4</sup>At present, BWIA's permit allows only one-stop service between New York and Port-of-Spain, via Antigua and Barbados.

anomalous situation. BWIA had non-stop rights in the fifth freedom markets of Antigua/Barbados-Miami, Barbados-New York, and Antigua-New York, but in only one third and fourth freedom market (Miami-Trinidad), even though Trinidad is BWIA's homeland. This anomaly led BWIA to construe its permit as authorizing non-stop service between Trinidad and New York. BWIA began to operate this service in 1974.<sup>4</sup> No agency of the United States Government questioned this service until late June, 1978.

BWIA also makes a reciprocity argument, noting that U.S.-flag carriers possess nonstop authority in both the New York-Trinidad and Miami-Trinidad markets.

The U.S. Department of State, responding to a request of the Government of Trinidad and Tobago, submitted a statement of position on August 30, 1978, recommending the expeditious granting of BWIA's application in Docket 33183. The Department of State argues the BWIA should be allowed to compete nonstop on an equal basis with U.S. airlines, and that such direct service would further the U.S. policy of promoting tourism in the Caribbean to foster economic development in that area.

No other responses to BWIA's application or motion in Docket 33183 have been received. No responses were even received to BWIA's two earlier applications in Dockets 13962 and 23229.

As mentioned previously, in granting BWIA's permit in 1966 (Order E-23279), the Board found that the carrier met the fitness standards of the Act, and that BWIA's services were in the public interest. BWIA's application in Docket 33183 continues to support these findings.

BWIA currently operates five weekly round trips on the New York-Trinidad route, using Boeing 707 equipment. We recognize that a strict reading of the "Bermuda I" Agreement<sup>5</sup> and of BWIA's permit might raise questions as to the validity of the carrier's actions. We accept, however, the BWIA argument (supported by the Government of Trinidad and Tobago) that the unique circumstances of the case call for a less than rigid approach. "Bermuda I" was designed to accommodate a series of West Indian Islands united into one political whole. It did not contemplate an independent Trinidad and Tobago. The change in circumstances engendered by Trinidad's independence warrants flexible interpretation. The Government of Trini-

<sup>5</sup>This service has been operated in addition to the intermediate stop service which had been offered prior to 1974.

<sup>6</sup>An Exchange of Notes dated September 27 and October 8, 1962, between the United States and Trinidad and Tobago makes "Bermuda I" applicable between the two countries.

dad and Tobago chose plausibly to regard the Bermuda treaty as permitting nonstop service between Port-of-Spain and New York. When such service was instituted by BWIA, no American agency questioned it. Our own Department of State feels that it would be in the United States' best interest to let such service continue.

The Board has taken no action on BWIA's application in Dockets 13962 and 23229 primarily because of its concern that the Government of Trinidad and Tobago was not providing total reciprocity to U.S. carriers. The Board now believes there is adequate opportunity for reciprocity to U.S.-flag carriers provided by the Government of Trinidad and Tobago. Thus, we have decided to process all three applications together by show cause procedures with the intent of granting them. To ensure that appropriate controls remain should reciprocity not continue to exist with respect to U.S. air carrier operations, we will limit the permit for Routes 4, 5 and 6 to a period of five years.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

1. It is in the public interest to amend and renew the foreign air carrier permit issued to British West Indian Airways Limited to authorize the carrier to engage in nonstop foreign air transportation of persons, property, and mail between the terminal points Antigua, W.I., St. Lucia, W.I., and Trinidad and Tobago, W.I., respectively, and the terminal point New York, New York;

2. The public interest requires that the exercise of the privileges granted by the amended permit be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

3. British West Indian Airways Limited is fit, willing and able properly to perform the foreign air transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

4. The public interest does not require an oral evidentiary hearing on the application;

5. The amendment and renewal of British West Indian Airways Limited's foreign air carrier permit will not constitute "a major Federal Action significantly affecting the quality of the human environment" within the

<sup>7</sup>Any interested persons having objections to the issuance of an order making final the board's tentative findings and conclusions, and issuing the attached permit, shall be allowed 21 days in which to respond to the date of service of this order.

meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in §313.4(a)(1) of the Board's Regulations;<sup>8</sup> and

6. Except to the extent granted, the applications of British West Indian Airways Limited in Dockets 13962, 23229, and 33183 are denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions stated here, and (2) issue an amended foreign air carrier permit to British West Indian Airways Limited in the specimen form attached, subject to the disapproval by the President;

2. Any interested person having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached specimen permit shall, no later than January 16, 1979, file with the Board and serve on the persons named in paragraph 5 below, a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings. Any interested person who wishes to answer these objections shall file such answers no later than January 26, 1979;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action: *Provided*, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order, if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing;<sup>9</sup>

<sup>8</sup>Our tentative findings are based upon the fact that amendment of BWIA's permit will not result in a significant increase in civil aviation operations at U.S. points, nor will it result in the annual consumption of more than 10 million gallons of fuel. We note in particular that BWIA has been providing nonstop service over the New York-Trinidad and Tobago route since 1974; and that we are merely renewing BWIA's Antigua-New York authority, which it has operated since the early 1960's, and removing the one-stop requirement on its New York-St. Lucia route.

<sup>9</sup>Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We are serving this order upon British West Indian Airways Limited, the Ambassador of Trinidad and Tobago in Washington, D.C., and the U.S. Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and transmit a copy to the President of the United States.

By the Civil Aeronautics Board:<sup>10</sup>

PHYLLIS T. KAYLOR,  
Secretary.

(SPECIMEN PERMIT)

United States of America Civil Aeronautics Board, Washington, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

British West Indian Airways Limited

is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations of the Board, to engage in foreign air transportation of persons, property, and mail, as follows:

1. Between the coterminous points Trinidad and Tobago; Jamaica; the Cayman Islands; and Belize; the intermediate points Barbados; Grenada; St. Lucia; Antigua; St. Kitts; St. Thomas, Virgin Islands; San Juan, Puerto Rico; Santo Domingo, Dominican Republic; Port-au-Prince, Haiti; Jamaica; Cuba; Nassau, Bahamas; and Bermuda; and the terminal point Miami, Florida;

2. Between the terminal point Barbados, and the terminal point New York, New York;

3. Between the terminal point London, England; the intermediate points Shannon, Eire; Iceland; the Azores; Bermuda; Gander and Montreal, Canada; and the terminal point New York, New York; and beyond New York to the terminal point Jamaica;

4. Between the terminal point Antigua, and the terminal point New York, New York;

5. Between the terminal point Trinidad and Tobago, and the terminal point New York, New York; and

6. Between the terminal point St. Lucia, and the terminal point New York, New York.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Trinidad and Tobago for international air service.

The holder shall not operate any aircraft under the authority granted by this permit.

<sup>10</sup>All Members concurred.

unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Trinidad and Tobago shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of \$1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in Agreement CAB 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; *However*, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted here shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall be effective on—, British West Indian Airways Limited's authority to serve Routes 4, 5 and 6 as described elsewhere in this permit, shall continue in effect for a period of five years. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designat-



ed by the Government of Trinidad and Tobago (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Trinidad and Tobago in lieu of the holder, or (3) upon the termination or expiration of the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland effective February 11, 1945 (Bermuda I) to the extent that Agreement remains in effect pursuant to an Exchange of Notes dated September 27 and October 9, 1962, between the Government of the United States of America and the Government of Trinidad and Tobago. However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and Trinidad and Tobago are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on—

PHYLLIS T. KAYLOR,  
Secretary.

(FR Doc. 78-36350 Filed 12-28-78; 8:45 am)

[6325-01-M]

#### CIVIL SERVICE COMMISSION

##### ALLOWANCES AND DIFFERENTIALS— NONFOREIGN AREAS

Public Comments on Compensation for Certain  
Federal Civilian Employees in the Nonfor-  
eign Areas

AGENCY: Civil Service Commission.

ACTION: Solicitation of comments on compensation programs as they affect certain Federal civilian employees in Alaska, Hawaii and U.S. territories and possessions (nonforeign areas).

SUMMARY: Section 5941 of title 5, United States Code, authorizes the payment of a cost of living allowance (COLA) and post differential to Federal civilian employees whose rates of pay are set by statute and who work in Alaska, Hawaii, the Commonwealth of Puerto Rico, or U.S. territories and possessions (hereafter referred to as the nonforeign areas or COLA areas). In Executive Order 12070 and in a Memorandum to the Chairman of the Commission, the President directed the Commission to conduct a study of problems associated with the implementation of 5 U.S.C. 5941, and to evaluate the practice of paying additional compensation based on living costs and environmental factors in relationship to other compensation programs and benefits. As part of that study, the Commission invites interested parties to submit their comments on pertinent issues.

DATE: Comments by February 12, 1979.

ADDRESS: Comments to Office of Allowances and Special Rates, Pay Policy Division, U.S. Civil Service Commission, Room 3353, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Richard J. Carney, Office of Allowances and Special Rates, Pay Policy Division, U.S. Civil Service Commission, Room 3353, 1900 E Street N.W., Washington, D.C. 20415, 202-632-8742.

#### SUPPLEMENTARY INFORMATION:

##### I. BACKGROUND—THE FEDERAL COMPENSATION SYSTEM AND THE NONFOREIGN AREAS

Since 1962, basic pay rates for most Federal white-collar employees have been based on the principle of pay comparability with private industry employees. Federal rates are adjusted annually based on the findings of a comprehensive survey of salaries paid by private employers in the 48 contiguous United States. The resulting basic rates of pay, however, apply to all employees in the United States and its territories and possessions who are under a statutory pay system, such as the General Schedule which covers the majority of white-collar employees.

Only the actual rates being paid to employees on each employer's payroll are used in adjusting Federal pay rates. This means that other economic and non-economic factors, such as location, climate, or local living costs, are not considered in establishing Federal basic rates of pay. To the extent that local living costs, environmental conditions or other factors influence pay decisions, they are implicitly reflected in the pay rates established by the private employers. Thus, when private industry rates are used in fixing Federal pay, the resulting Federal rates also implicitly include the same factors considered by industry.

Other programs provide for additional compensation, on top of basic pay, under certain conditions. These include, for example, overtime pay for work in excess of the established workweek or workday; and premium pay for night work and for regular duty on Sunday. Provisions are also made for extra compensation for hazardous duty and for commuting to remote posts of duty. Flexibility is available to increase basic pay rates, i.e., setting special salary rates when significant staffing problems exist because of higher non-Federal pay for comparable levels of work. These compensation programs apply generally in

all locations including the nonforeign areas.

A statute enacted in 1948 provides for additional compensation for white-collar employees, including U.S. Postal Service employees, in nonforeign areas based on two factors:

1. The extent to which the local cost of living substantially exceeds living costs in Washington, D.C., or
2. Conditions of environment (climate extremes, remote locations, limited services/facilities, etc.) that differ substantially from those in the mainland United States.

To accommodate the first factor, a cost of living allowance (COLA) is established where warranted based on a comprehensive annual survey of living costs in each allowance area and in Washington, D.C. For factor two, a post differential is paid where warranted based on a survey of environmental conditions at the post of duty. Under the statute the additional compensation may not exceed 25 percent of an employee's basic rate of pay for either program separately or in combination.

This statute was enacted to help Federal agencies staff positions in geographic areas outside the then 48 States. Basically, at the time of enactment local labor markets in the nonforeign areas were often not able to provide adequate numbers of qualified persons to meet Federal staffing needs. Accordingly, it was necessary to recruit from outside those areas, primarily from the mainland United States. Recruiting was difficult because of factors such as isolation from the U.S., relocation expenses, high living costs, remoteness of some posts, and generally difficult environmental and living conditions at many posts. The statute, therefore, provided authority to offer additional compensation which served as a recruiting incentive.

##### II. ADDITIONAL COMPENSATION BASED ON LIVING COSTS

In determining whether an allowance is warranted and, if so, the amount of the allowance rate, annual comprehensive surveys are conducted in each allowance area and in Washington, D.C. An allowance rate is based on the difference in the cost of living for each allowance area compared to Washington, D.C. The allowance rate is affected by price level fluctuations both in the allowance area and in Washington, D.C. Thus, if prices and costs increase at a faster rate in Washington, D.C., than in an allowance area, the living cost difference decreases and the allowance rate is reduced accordingly. Conversely, if prices and costs increase at a faster rate in the allowance area, the living

cost difference increases and the allowance rate is increased.

Allowance rates are adjusted in 2½ percentage point increments, so minor variations in the place to place living cost indexes from year to year will not necessarily result in a change in an allowance rate. The minimum rate paid is five percent and this must be based on a comparative index of at least 105. The allowance is paid as a percentage of an employee's basic rate of pay and is Federal tax free; however, it may be taxed by local governments.

The index computation method involves collecting prices and costs on about 160 items of consumer goods and services divided into 14 major expenditure categories. Price data are obtained from those retail outlets used most frequently by Federal employees. These include, for example, food stores, clothing outlets, drug stores, and auto insurance companies. Where available, prices are also obtained from military commissary and exchange facilities. In total about 700 prices are collected in each survey. The 14 expenditure categories are as follows:

|                       |                         |
|-----------------------|-------------------------|
| Meats, Eggs, Fats     | Medical and Dental Care |
| Groceries             | Recreation              |
| Fruits and Vegetables | Transportation          |
| Tobacco and Alcohol   | Domestic Service        |
| Personal Care         | Food Away from Home     |
| Household Operations  | Auto Purchase           |
| Clothing              | Housing                 |

Within most expenditure categories a number of consumer items have been selected for pricing to represent all items that may be consumed within that category. In the meat group, for example, 17 different cuts are specified, while 12 fresh vegetables are priced in addition to canned and frozen items. Only new automobiles are priced but several makes are included where available. Housing cost data are collected directly from a sample of Federal employees in each allowance area and in Washington, D.C.

The total comparative cost index is a weighted average of the 14 expenditure categories, each of which in turn is a weighted index of the included survey items. The weights are derived from the relative proportion of typical Washington, D.C., family consumer budget expenditures for that item and expenditure category. The weights currently in use were updated in 1972. The same weights, expenditure categories, items surveyed and computational techniques are used in all allowance areas.

Where provided as a condition of Federal civilian employment, Federal housing, commissary, exchange or other special purchasing privileges are considered in fixing the allowance

rates for employees with such privileges.

At the present time, the basic allowance rates<sup>1</sup> and the number of employees covered by the allowance program are as follows:

| Geographic location          | Basic allowance rate <sup>1</sup> | Number of employees |
|------------------------------|-----------------------------------|---------------------|
| ALASKA:                      |                                   |                     |
| Anchorage.....               | 25%                               | 5,000               |
| Fairbanks.....               | 25%                               | 890                 |
| Juneau.....                  | 25%                               | 750                 |
| Rest of State.....           | 25%                               | 2,400               |
| HAWAII:                      |                                   |                     |
| Oahu.....                    | 15%                               | 14,500              |
| Hawaii.....                  | 15%                               | 350                 |
| Molokai.....                 | 15%                               | 20                  |
| Maui and Lanai.....          | 12.5%                             | 200                 |
| Kauai.....                   | 17.5%                             | 270                 |
| GUAM.....                    | 10%                               | 1,700               |
| PUERTO RICO:                 |                                   |                     |
| San Juan Area.....           | 10%                               | 5,100               |
| Outside San Juan Area.....   | 5%                                | 2,000               |
| VIRGIN ISLANDS:              |                                   |                     |
| St. Thomas and St. John..... | 7.5%                              | 160                 |
| St. Croix.....               | 5%                                | 150                 |

##### III. ADDITIONAL COMPENSATION BASED ON CONDITIONS OF ENVIRONMENT

The 1948 statute provides for additional compensation up to 25 percent of base pay when environmental conditions at a nonforeign post warrant extra pay as a recruiting incentive. Environmental factors that are considered in setting this compensation (called a post differential) include climate extremes, remoteness, availability of consumer goods and services, recreational activities, quality of housing, medical and dental facilities, sanitation conditions, and related factors. The basic comparison of environmental conditions is with the mainland United States, generally metropolitan areas, because the majority of the Federal work force is located in those areas.

Since 1948, a post differential has been authorized for all the Pacific Ocean islands under U.S. jurisdiction except the State of Hawaii. These locations include American Samoa, Guam, Wake Island, Midway Island, and Johnston Island. The maximum 25 percent is paid on all the islands except Guam, where the rate was reduced to 20 percent several years ago.

A differential has not been authorized for any location within Alaska, even though many locations could qualify. The reason for this is that the statute places a limit of 25 percent on combined COLA and post differential payments at any post of duty, and the maximum 25 percent has already been authorized for COLA.

The differential is paid only to employees hired off-island, because it is specifically designed as an incentive to

<sup>1</sup>The basic allowance rate covers 90 percent or more of all eligible employees in each allowance area.

induce needed categories of employees, who would not otherwise be interested, to relocate to the differential area. Under the statute it would not be appropriate to make such payments to individuals already in the area for other reasons, even though the environmental/hardship conditions which exist at a post generally affect all Federal employees as well as other residents of the area. Once eligible, an employee continues to receive the differential as long as he or she remains at the post of duty. On Guam, 300 to 400 employees are eligible for the differential, while in all other locations combined fewer than 200 employees are eligible.

Labor market conditions on Guam have changed significantly over the years. With the exception of some specialized professional and technical occupations, the local labor market has generally been able to satisfy staffing needs.

##### IV. FEDERAL COMPENSATION RELATIVE TO NON-FEDERAL COMPENSATION IN THE NONFOREIGN AREAS

As part of the review of the statute, the Commission will be exploring other options in an effort to assure the development of a rational compensation plan for the nonforeign areas. This includes, but is not limited to, alternative approaches to providing additional compensation rather than basing the extra pay solely on cost of living or environmental factors. Any compensation plan, regardless of its features, must assure that the Government can attract and retain a staff of well qualified employees while at the same time be fair to employees and the taxpayers.

This part of the study will examine how the Federal employee's compensation, i.e., base pay plus COLA where paid, compares with the compensation of non-Federal employees in the nonforeign areas. The table below shows how Federal pay, with and without the additional pay provided under the COLA program, compares with non-Federal pay in some nonforeign areas.

It should be noted that the pay data shown on the table are based on the results of a limited survey of a number of occupations that are numerically significant in terms of Federal employment in the nonforeign areas shown. Time constraints did not permit conducting more comprehensive surveys in each location. For this reason, adequate data could not be obtained for the Virgin Islands or for those grade level equivalents for which data are not shown. Nevertheless, while there are some limitations in the data, the table does provide a reasonable indicator of the relative levels of non-Federal pay compared to Federal pay.



## NOTICES

Federal data shown reflect the rates in effect for the same relative time periods and do not include the October 1978 general pay increase or any adjustments in COLA rates that may have occurred at a later date.

The rates for Anchorage, Alaska include data obtained from the bureau of Labor Statistics *Area Wage Survey, Alaska, July 1978*; a spring of 1978 survey of clerical rates conducted by a private firm which includes responses from 27 firms; and an August 1978 CSC survey of 50 private firms covering positions primarily in the middle and upper grade level, and State government rates.

For Honolulu, Hawaii, the pay rates were obtained during an August 1978 CSC survey of 62 private industry firms and the State government.

For Puerto Rico, rates were obtained from the Bureau of Labor Statistics *Area Wage Survey, Puerto Rico, December 1977*. And for Guam, from the Bureau of Labor Statistics *Area Wage Survey, Guam, December 1977*.

[6325-01-C]

## FEDERAL/NON-FEDERAL PAY COMPARISONS - NONFOREIGN AREAS

|       | ANCHORAGE   |        |              | HONOLULU    |         |              | PUERTO RICO |              |         | GUAM         |              |
|-------|-------------|--------|--------------|-------------|---------|--------------|-------------|--------------|---------|--------------|--------------|
|       | NON-FEDERAL |        | FEDERAL      | NON-FEDERAL |         | FEDERAL      | NON-FEDERAL |              | FEDERAL | FEDERAL      |              |
|       | Private     | State  | Basic w/COLA | Private     | State   | Basic w/COLA | Private     | Basic w/COLA | Private | Basic w/COLA | Basic w/COLA |
| GS-1  | \$10,044    | -      | 7,539        | \$8,175     | \$7,553 | \$7,153      | \$6,661     | \$7,308      | \$7,588 | \$7,401      | \$7,141      |
| GS-2  | 11,635      | -      | 8,323        | 11,157      | 8,371   | 8,868        | 7,490       | 8,303        | 9,128   | 8,414        | 9,258        |
| GS-3  | 13,835      | 13,761 | 10,404       | 11,453      | 10,459  | 10,872       | 7,881       | 9,530        | 10,631  | 10,000       | 11,028       |
| GS-4  | 15,652      | 14,303 | 12,784       | 13,446      | 12,917  | 12,142       | 8,733       | 11,345       | 12,550  | 11,112       | 12,122       |
| GS-5  | 18,253      | 18,612 | 13,311       | 17,821      | 13,567  | 14,845       | 9,422       | 14,707       | 16,345  | -            | -            |
| GS-6  | 21,212      | 18,324 | 17,222       | 17,352      | 13,830  | 17,117       | -           | -            | -       | -            | -            |
| GS-7  | 24,272      | 23,524 | 20,756       | 17,495      | 18,292  | 21,223       | 11,858      | 21,868       | 24,376  | 12,376       | 22,948       |
| GS-8  | 28,754      | 28,728 | 25,145       | 23,495      | 23,876  | 25,974       | 12,147      | 25,273       | 28,432  | 14,497       | 27,720       |
| GS-9  | 32,121      | 32,078 | 31,252       | 26,395      | 28,715  | 30,841       | -           | -            | -       | -            | -            |
| GS-10 | -           | 38,984 | 37,900       | 27,840      | 32,587  | 36,106       | -           | -            | -       | -            | -            |
| GS-11 | -           | 47,522 | 43,380       | 36,860      | 34,814  | 42,840       | -           | -            | -       | -            | -            |
| GS-12 | -           | -      | -            | -           | -       | -            | -           | -            | -       | -            | -            |
| GS-13 | -           | -      | -            | -           | -       | -            | -           | -            | -       | -            | -            |
| GS-14 | -           | -      | -            | -           | -       | -            | -           | -            | -       | -            | -            |
| GS-15 | -           | -      | -            | -           | -       | -            | -           | -            | -       | -            | -            |



As the table shows, basic Federal pay rates compare very favorably with private rates in Puerto Rico and Guam; with COLA added, Federal compensation is significantly higher. In Honolulu, basic Federal rates lag behind private pay up to about the GS-9 level, while above that level the basic rates are higher than private rates. At all levels, basic rates compare favorably with Hawaii State Government pay. When COLA is added, Federal compensation generally exceeds private pay at the lower grades and is significantly higher at the upper grade levels. For Anchorage, basic Federal pay is substantially below private as well as State pay, and even with COLA added Federal compensation is lower.

#### V. QUESTIONS/ISSUES FOR CONSIDERATION AND COMMENT

The questions/issues outlined in this section are intended to stimulate discussion and comment and are not intended to be all inclusive. Comments are encouraged on these and any other aspects of the statute and its administration as well as on the concept of providing additional compensation based on living costs or environmental conditions.

#### A. ADMINISTRATION OF COST OF LIVING ALLOWANCE PROGRAM

1. Should the geographic coverage of allowance rates be on the broadest possible basis, e.g., survey each island within the State of Hawaii and set a state-wide rate based on the average costs in all locations? Or, should the coverage of the rates be relatively narrow so as to reflect the living costs experienced by employees in a discrete economic community, e.g., Maui Island, Fairbanks area, Ponce area?

2. Military commissary and exchange facilities are available to Federal civilian employees in certain locations and under certain conditions. Prices and costs in these facilities typically are lower than prices and costs in local private retail outlets and, thus, influence living costs. Access to these special facilities may be related to present civilian employment, to prior military service or to the status of an employee's spouse. Federal housing units, both civilian and military, are also available to certain employees and the rental fees may be lower than the cost of comparable private units. To what extent should the prices and costs charged in these special Government facilities be considered in setting the cost of living allowance for employees who have access to them? Should distinctions be made as to the reasons for the access? Should finer distinctions in category be made for affected groups?

3. The statute places a limitation on the amount of COLA or post differen-

tial that may be paid. The limit is 25 percent of an employee's basic rate of pay for the cost of living allowance, for the post differential, or for both combined. Should there be a maximum limitation on payments under either program and/or on combined payments? If so, what should it be?

4. Cost of living allowance rates are paid as a percentage of an employee's basic rate of pay even though some expenditures from base pay are unaffected by inter-area living cost differences. Such expenditures include retirement contributions, health and life insurance premiums, Federal income tax, savings, gifts and contributions. Depending on income level and family status, such expenditures may range from 20 percent of income at lower income levels to 50 percent at higher income levels. Should allowance payments be related only to that portion of income that is affected by inter-area living cost differences? (This is commonly referred to as "spendable income.") Or should payments continue to be related to 100 percent of base pay? Should marital status and number of dependents be a factor in allowance rate payments?

5. The cost of living allowance program methodology is oriented toward consumption budget expenditures of a family unit. If there are two members of a family in the same household working in Federal civilian positions covered by the COLA program, both family members presently receive the same percentage allowance rate of their individual basic rates of pay. Should adjustments be made in allowance rate payments when two (or more) members of the same household are eligible for COLA? If so, how should the adjustments be made?

6. Housing costs data used in the computation process are collected directly from a sample of Federal civilian employees in each allowance area and in Washington, D.C. This sample covers all grade (income) levels and is restricted to married male employees because of the program orientation toward family budget expenditures. Excluded under this approach are data from single employees, both male and female, and unmarried heads of households, both male and female. Should the sample be structured so as to collect data from all employees regardless of marital or personal status? Should housing cost data be obtained by some other method? If so, what approach would you suggest? Should average living costs be calculated for families and households of all sizes?

7. Washington, D.C., is specified in the statute as the base mainland U.S. city to be used in making the living cost comparisons with each allowance area. Should the statute be changed to provide a different base for the com-

parison? What other changes would you suggest be made in the statute?

#### B. FEDERAL COMPENSATION CONCEPTS AND PRINCIPLES IN THE NONFOREIGN AREAS

1. As the comparative pay table shown above illustrates, total Federal compensation, i.e., base pay plus COLA, is higher than non-Federal pay in all locations except Alaska. Regular Federal base rates are somewhat lower than private pay in Hawaii at the lower grade levels; however, this is also true of some locations in the mainland U.S. because the regular rates are based on nationwide average private pay. Should only the nationwide regular pay rates apply to the nonforeign areas, rather than a combination of regular rates plus additional compensation based on living costs? Should Federal basic pay rates in the nonforeign areas be based on local non-Federal pay in each area? Should distinctions be made between lower grade levels and upper grade levels, e.g., local pay for lower grades and nationwide rates for upper grades?

2. Since available data show that non-Federal pay in Alaska is substantially higher than Federal pay, with or without COLA, as well as higher than the pay rates in the 48 contiguous United States, what should be the basis for fixing Federal pay in that State? Should pay distinctions be made between duty posts in the three principal cities (Anchorage, Fairbanks, and Juneau) and the outlying ("bush") areas? What should be the basis for the distinctions, e.g., staffing difficulty only, environmental factors only?

3. To what extent should local living costs be considered in setting Federal pay in the nonforeign areas? What should be the basis for including living costs in determining Federal pay? For example, when local costs exceed some norm, either national or regional; when staffing problems develop; to the extent that a combination of base pay plus COLA does not exceed local non-Federal pay?

4. In consideration of the fact that it is necessary to staff duty posts having widely varying environmental/living conditions, what type of compensation flexibility should be available to provide additional pay to help staff those duty posts? What should be the basis for use of the flexibility, e.g., staffing needs only, or environmental conditions regardless of staffing factors?

#### UNITED STATES CIVIL SERVICE COMMISSION.

JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc. 78-35956 Filed 12-28-78; 8:45 am]

#### PRIVACY ACT OF 1974

##### Proposed New System of Records

AGENCY: U.S. Civil Service Commission.

ACTION: Proposed new system of records.

SUMMARY: The purpose of this document is to give notice pursuant to 5 U.S.C. 552a(e)(4), of the Civil Service Commission's intent to establish for the Office of Personnel Management a new system of records (OPM/GOVT-4-Ethics in Government Financial Disclosure Records) implementing provisions of the Ethics in Government Act of 1978, Pub. L. 95-521.

DATE: Any interested party may submit written comments regarding the proposal. To be considered, comments must be received on or before January 29, 1979.

ADDRESS: Address comments to the Office of the General Counsel, U.S. Civil Service Commission (Room 5H22), 1900 E Street NW., Washington, D.C. 20415. Comments received will be available for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Joyce L. Evans, Office of the General Counsel (202) 632-5506, and David Reich, Office of the General Counsel (202) 632-5421.

SUPPLEMENTARY INFORMATION: The Ethics in Government Act of 1978, Pub. L. 95-521, dated October 26, 1978, created the Office of Government Ethics (OGE) in the Office of Personnel Management (OPM). This Act is designed to preserve and promote the integrity of public officials and institutions and requires covered individuals to file reports with the Director, OGE, the Federal Election Commission, designated agency ethics officers, and in the case of uniformed personnel with the "Secretary concerned." The Director, OGE, is responsible for: ensuring compliance with the Act by covered individuals of the Executive branch; suggesting procedures designed to ensure successful achievement of the purposes of the Act; and, along with the Attorney General, conducting investigations into possible violations of conflict-of-interest laws.

The expanded character of the data reported to the Director, OGE, and designated agency ethics officers, the larger number of individuals covered by this Act, and the public nature of the information furnished eliminates any possibility for maintenance of these records in an existing system of

records. Further, the designation of the Director, OGE, as system manager for these records, the assurance of full public awareness of the existence of and purposes for maintaining this system of records, and the minimizing of agency action by relieving them of the need to create new or modify existing systems of records are goals that are met by establishing this new Government-wide system of records. The System will cover those records maintained as a result of this Act in the Director's office, the Federal Election Commission, the "Secretary concerned," or by agency designated ethics officers, for all covered individuals in the Executive branch.

Reports describing the new system are being filed, concurrent with this publication, with the Speaker of the House, the President of the Senate, and the Office of Management and Budget. The Commission has requested a waiver of the Office of Management and Budget 60-day advance notice requirement, since to delay implementation of this mandated program would adversely affect the public interest in assuring the access of the program, and impede compliance with the law by those officials required to file financial statements before the 60-day notice period expires. This system will become effective the date that OMB grants the waiver. The complete text of the proposed new system appears below.

United States Civil Service Commission.  
James C. Spry,  
Executive Assistant to  
the Commissioners.

#### OPM/GOVT-4

##### System name:

Ethics in Government Financial Disclosure Records

##### System location:

Director, Office of Government Ethics, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and agency designated ethics offices.

##### Categories of individuals covered by the system:

This system contains records on: The President, Vice President and candidates for those offices; Executive branch officers and employees, including special government employees, whose positions are classified at grades GS-16 and above or at an equivalent rate under another pay schedule; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16; Administrative Law Judges; employees in the excepted service in positions which are of a

confidential or policy-making nature unless an employee or groups of employees are exempted by the Director of the Office of Government Ethics; each member of a uniformed service whose pay grade is at or in excess of GS-7 under section 201 of title 37, United States Code; the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service, and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; the Director of the Office of Government Ethics and designated agency officials; and nominees for positions requiring confirmation by the Senate or both Houses of Congress. This system includes both former and current employees in these categories.

##### Categories of records in the system:

This system of records contains financial information such as: income from salaries, honoraria, dividends, rent, interest, trusts and capital gains; interest in property held in a trade or business or for investment or the production of income; income from the sale, exchange or purchase of real property or property such as stocks and bonds; gifts; reimbursements; liabilities in excess of \$10,000 owed to any creditor; copies of and documents relating to qualified blind trusts; information on positions held in private organizations and on agreements with private employees; and other documents that may be generated in the course of administering the Act.

##### Authority for maintenance of the system:

Pub. L. 95-521, Ethics in Government Act of 1978.

##### Purpose:

These records are maintained to meet the requirements of the Ethics in Government Act of 1978, Pub. L. 95-521 regarding the filing of financial status reports. Such statements and related records are required to assure compliance with the Act and to preserve and promote the integrity of public officials and institutions.

##### Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and information in these records may be used:

a. To disclose any and all of the information furnished by the reporting official, in accordance with provisions of section 205 of the Ethics in Government Act of 1978, to any requesting person.

b. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or imple-



menting a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in rare instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Office of the Special Counsel and the Merit Systems Protection Board when requested in performance of their authorized duties.

**Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:**

**Storage:**

These records are maintained in file folders.

**Retrievability:**

These records are retrieved by the names of the individuals on whom they are maintained.

**Safeguards:**

These records are located in file cabinets to which only authorized personnel have access.

**Retention and disposal:**

These records are generally maintained for a period of six years after filing, except when filed by a nominee for an appointment requiring confirmation by the Senate where the nominee is not appointed and Presidential and Vice-Presidential candidates who are not elected. In these cases, the record is destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. Destruction is by shredding or burning.

**Systems manager(s) and address(es):**

The system managers are:

1. For records filed directly with the Office of Government Ethics, the systems manager is the Director, Office of Government Ethics, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415; and

2. For records filed with designated agency ethics officers or the "Secretary concerned," the systems manager is: Agency Designated Ethics Officer, Headquarters, Department or Agency, Washington, D.C. (ZIP code).

3. For records filed with the Federal Election Commission by candidates for President or Vice President, the systems manager is the Staff Director, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

**Notification procedure:**

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate systems manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name  
b. Department or agency and component with which employed or proposed to be employed.

**Records access procedures:**

Individuals wishing to request access to their records should contact the appropriate systems manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name  
b. Department or agency and component with which employed or proposed to be employed.

Individuals requesting access to information not generally available to the public under the Act must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records. (5 CFR 297.201 and 297.203).

**Contesting record procedures:**

Since the information in these records is updated on a periodic basis,

most record corrections can be handled through established administrative procedures for updated the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate systems manager indicated above.

**Record source categories:**

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;  
b. Federal officials who review the statements to make conflict-of-interest determinations.  
c. Persons alleging conflicts of interest and persons contacted during any investigation of the allegations.

(FR Doc. 78-35974 Filed 12-28-78; 8:45 am)

[6325-01-M]

**TRANSFER OF FUNCTION**

AGENCY: Civil Service Commission.

ACTION: Notice of transfer of functions.

**SUMMARY:** Under the President's Reorganization Plans No. 1 and 2 of 1978, designated functions of the Civil Service Commission are transferred to (1) the Equal Employment Opportunity Commission, (2) the Office of Personnel Management, (3) the Office of Special Counsel, and (4) the Federal Labor Relations Authority, effective January 1, 1979. Appellate and other adjudication functions and certain special studies functions will remain with the Civil Service Commission which on January 1, 1979, by redesignation, becomes the Merit Systems Protection Board. Under section 907(a) of title 5, United States Code (Reorganization Act of 1977), all regulations of the Civil Service Commission will remain in effect, except to the extent rescinded, modified, superseded or made inapplicable by the Plans, as regulations of the agencies succeeding to or performing these functions until amended by these agencies. Further, the Civil Service Reform Act provides that all rules and regulations affecting Federal service in effect on January 11, 1979, except as otherwise provided in the Act, shall continue in effect according to their terms, until modified, terminated, superseded, or repealed by the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

EFFECTIVE DATE: January 1, 1979.  
FOR FURTHER INFORMATION CONTACT:

Thomas F. Moyer, 202-632-5524.

Civil Service Commission.

JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

(FR Doc. 78-34354 Filed 12-28-78; 8:45 am)

[3510-25-M]

**DEPARTMENT OF COMMERCE**

Industry and Trade Administration

**COMPUTER PERIPHERALS, COMPONENTS AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE**

**Partially Closed Meeting**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Tuesday, January 23, 1979, at 9:30 a.m. in Room 5230, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977 and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has four parts:

**GENERAL SESSION**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Subcommittee reports:

- A. Foreign Availability;
- B. Memory and Media;
- C. Display and Terminals; and
- D. Export Regulations.

**EXECUTIVE SESSION**

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41071).

Dated: December 26, 1978.

RAUER H. MEYER,  
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

(FR Doc. 78-36342 Filed 12-28-78; 8:45 am)

[3510-25-M]

**TECHNOLOGY TRANSFER SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE**

**Partially Closed Meeting**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, January 17, 1979, at 1:00 p.m. in Conference Room D, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee was initially established on April 10, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Technology Transfer Subcommittee was formed to examine the impact of transferring Automatic Data Processing technology to Communist destinations.



The Subcommittee meeting agenda has four parts:

#### GENERAL SESSION

- (1) Opening remarks by the Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Review of possible future activities for the Subcommittee for 1979.

#### EXECUTIVE SESSION

- (4) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4) the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4198.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcom-

mittees thereof, was published in the **FEDERAL REGISTER** on September 14, 1978 (43 FR 41072).

Dated: December 26, 1978.

**RAUER H. MEYER,**  
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36341 Filed 12-28-78; 8:45 am]

#### [3510-04-M]

##### National Technical Information Service GOVERNMENT-OWNED INVENTIONS Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for \$.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for \$4.00 (\$8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

**DOUGLAS J. CAMPION,**  
Patent Program Coordinator,  
National Technical Information Service.

U.S. Department of the Air Force, AF/Jacp, 1900 Half Street, SW., Washington, D.C. 20324.

Patent application 921,139: High Specific Strength Polycrystalline Titanium-Based Alloys, filed June 30, 1978.

Patent application 922,603: Control Cable Fail Safe Device, filed July 7, 1978.

Patent application 992,604: Magazine for Glass Photographic Plates, filed July 7, 1978.

Patent 4,090,672: Aluminum Base Brazing Alloy, filed December 29, 1976, patented May 23, 1978. Not available NTIS.

Patent 4,091,453: Low Offset AC Correlator, filed November 10, 1976, patented May 23, 1978. Not available NTIS.

Patent 4,091,460: Quasi Static, Virtually Nonvolatile Random Access Memory Cell, filed October 5, 1976, patented May 23, 1978. Not available NTIS.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent application 816,574: Lanthanum Nickel Aluminum Alloy, filed July 18, 1977.

Patent 4,069,357: Process for Diffusing Metallic Coatings into Ceramics to Improve Their Voltage Withstanding Capabilities, filed November 9, 1976, patented January 17, 1978. Not available NTIS.

Patent 4,069,867: Cyclic Flow Underground Coal Gasification Process, filed December 17, 1976, patented January 24, 1978. Not available NTIS.

Patent 4,073,720: Method for Reclaiming Waste Lubricating Oils, filed October 22, 1976, patented February 14, 1978. Not available NTIS.

U.S. Department of the Navy, Assistant Chief for Pat. Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 321,913: Corner Fed Electric Non-Rectangular Microstrip Dipole Antennas, filed July 3, 1978.

Patent application 895,838: Direction-Finding Array of Crossed Dipoles, filed April 13, 1978.

Patent application 905,902: TV Bandwidth Reduction System Using a Hybrid Discrete Cosine DPCM, filed May 15, 1978.

Patent application 913,624: Angle Servo Preamplifier, filed June 8, 1978.

Patent application 918,203: Dry Ice, Liquid Pulse Pump Cooling System, filed June 22, 1978.

Patent application 919,195: Corner Fed Electric Rectangular Microstrip Dipole Antenna, filed June 26, 1978.

Patent application 924,024: Rotor Hub for a Helicopter, filed July 12, 1978.

Patent application 924,280: Mode Control Apparatus for a Separable-Insert Coaxial Magnetron, filed July 10, 1978.

Patent 4,055,776: CCD Differential Current Apparatus, filed October 26, 1976, patented October 25, 1977. Not available NTIS.

Patent 4,068,311: Discrete Transform Systems Using Permuter Memories, filed December 3, 1976, patented January 10, 1978. Not available NTIS.

Patent 4,071,012: Fluid Fill or Bleed Apparatus, filed April 23, 1976, patented January 31, 1978. Not available NTIS.

Patent 4,078,509: Salvage Apparatus and Method, filed May 27, 1976, patented March 14, 1978. Not available NTIS.

Patent 4,086,769: Compound Memory Engine, filed May 19, 1975, patented May 2, 1978. Not available NTIS.

Patent 4,087,743: Fog-Water Conductivity Measuring Device, filed July 21, 1976, patented May 2, 1978. Not available NTIS.

Patent 4,088,622: Molded Drag Reduction Coatings, filed June 25, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,088,623: Coatings That Reduce Flow Resistance and Turbulent Drag at Their Interface with Liquids, filed June 28, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,090,193: Frequency Multiplexed Water Leak Detection System, filed November 24, 1976, patented May 16, 1978. Not available NTIS.

[FR Doc. 78-36249 Filed 12-28-78; 8:45 am]

#### [6820-33-M]

##### COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

#### PROCUREMENT LIST 1979

##### Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 31, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1979, November 15, 1978 (42 FR 53151):

#### CLASS 7105

##### WOODEN PICTURE FRAMES

7105-00-297-3398

7105-00-149-1277

7105-00-465-6199

7105-00-052-8696

7105-00-903-1842

7105-00-903-1843

7105-00-985-7356

7105-00-149-1276

7105-00-641-4385

7105-00-297-3397

7105-00-052-8684

7105-00-052-8685

7105-00-052-8687

7105-00-052-8688

7105-00-052-8694

7105-00-149-1280

7105-00-149-1281

7105-00-149-1282

#### Sic 7349

Janitorial/Custodial Service at:  
Bridge of the Americas  
Paso Del Norte  
Good Neighbor Bridge Border Stations  
Cotton Classing Building  
El Paso, Texas

**E. R. ALLEY, Jr.,**  
Acting Executive Director.

[FR Doc. 78-36252 Filed 12-28-78; 8:45 am]

#### [6820-33-M]

##### PROCUREMENT LIST 1979

##### Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from Procurement List 1979 commodities produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 29, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On November 3, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 51445) of proposed deletions from Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby deleted from Procurement List 1979:

#### CLASS 6530

##### WRAPPERS, STERILIZATION

6530-00-719-0000

6530-00-299-9602

6530-00-719-0030

6530-00-299-9601

6530-00-719-0035

6530-00-299-9600

6530-00-719-0040

6530-00-299-9599

6530-00-719-0045

6530-00-850-8613

#### CLASS 7510

##### ERASER, MECHANICAL

7510-00-865-5292

7510-00-082-2665

#### CLASS 7920

##### SPONGE, CELLULOSE

7920-00-559-8462

7920-00-559-8463

7920-00-559-8464

**E. R. ALLEY, Jr.,**  
Acting Executive Director.  
[FR Doc. 78-36253 Filed 12-28-78; 8:45 am]

#### [6355-01-M]

##### CONSUMER PRODUCT SAFETY COMMISSION

##### FINANCIAL COMPENSATION OF PARTICIPANTS IN INFORMAL RULEMAKING PROCEEDINGS

##### Delegation of Authority

AGENCY: Consumer Product Safety Commission.

ACTION: Delegation of authority.

SUMMARY: Under an interim regulation, the Commission will be administering a temporary program of financial compensation for participants in its informal rulemaking proceedings. The Commission has delegated to a special selection committee the authority to decide who will receive such funding. The Commission has retained the authority to decide in which informal proceedings it will solicit applications for funding.

DATES: The delegation of authority became effective on December 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Catherine Bolger, Office of Public Participation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (202) 254-6241.

SUPPLEMENTARY INFORMATION: On May 31, 1978 the Commission issued an interim regulation concerning the financial compensation of participants in the Commission's informal rulemaking proceedings (16 CFR Part 1050, 43 FR 23560-64). This regulation contains the policies and procedures for the Commission's temporary financial compensation program.

Under the regulation the Commission selects certain proceedings in which to solicit applications for funding. The Commission then authorizes funding for certain participants, all of whom must meet the criteria included in the regulation.



The Commission has recently delegated some of its authority over the financial compensation temporary program. A special Financial Compensation Selection Committee—comprised of the General Counsel, the Executive Director, and the Secretary of the Commission—will select the participants and the amount of funding they will be authorized to receive. The Commission has not delegated its authority for selection of proceedings.

The delegation document, fully reprinted below, details the authority delegated to the special selection committee and the authority retained by the Commission. It will remain in effect until the Commission changes it.

#### DELEGATION OF AUTHORITY FOR FUNDING SELECTED PARTICIPANTS IN INFORMAL RULEMAKING PROCEEDINGS

1. **Purpose.** The purpose of this order is to delegate the Commission's authority to decide which participants in informal rulemaking proceedings will be authorized to receive financial compensation from the Commission.

2. **Scope.** The provisions of this order apply to the Financial Compensation Selection Committee.

3. **References.** Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)).

4. **Delegation of authority.** In an interim regulation (16 CFR Part 1050) the Commission has issued its policies and procedures for providing financial compensation to selected participants in its informal rulemaking proceedings. In this order the Commission is delegating some of the authority it has under that regulation to a Financial Compensation Selection Committee. Unless and until superseded by subsequent order, this delegation is delegated as follows:

(a) The General Counsel, the Executive Director, and the Secretary of the Commission will be members of a Financial Compensation Selection Committee ("Committee"). If any or all of these positions are vacant, whoever is filling the position(s) on an acting basis will be a member of the Committee. Whenever a member is unable to function on the Committee, he or she may designate a subordinate to serve temporarily as a member of the Committee.

(b) While serving on the Committee, all members will follow the applicable provisions of the interim regulation and their own judgments. Although the members normally report to the Chairman of the Commission and serve all the Commissioners, they will make all Committee decisions independent of any instructions or recommendations from the chairman or Commissioners.

(c) All actions of the Committee must be supported by at least two members.

(d) The committee will evaluate all applications (including late applications, described in § 1050.6(a)(4), to the extent practicable) for financial compensation in informal rulemaking proceedings and will authorize funding for selected participants who meet the criteria of § 1050.4(b). The Committee will then notify participants whether they have or have not been authorized funding, in accordance with §§ 1050.6(a)(3) and 1050.6(b).

(e) The amounts of funding authorized will be in accordance with § 1050.7(b), (d), and (e).

5. **Retention of authority.** The Commission retains all of the authority under the interim regulation that is not delegated to the Committee by this order. In particular, the Commission will select those proceedings in which to solicit applications for funding; approve the FEDERAL REGISTER document which notifies the public of those proceedings; and set the deadline for receipt of applications (§ 1050.6(a) (1) and (2)). Further, the Commission specifically retains the authority to establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and to establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding (§ 1050.7(a)). Such limitations must be established before the Committee authorizes any funding in a particular proceeding.

6. **Redelegation.** The authority delegated to the Financial Compensation Selection Committee in this order may not be redelegated.

7. **Effective date.** This delegation shall become effective on December 11, 1978.

SUSAN B. KING,  
*Chairman.*  
BARBARA H. FRANKLIN,  
*Commissioner.*  
R. DAVID PITTLE,  
*Commissioner.*

Dissenting:  
EDITH B. SLOAN,  
*Commissioner.*

Not voting:  
SAMUEL ZAGORIA,  
*Commissioner.*

Dated: December, 1978.

SADYE E. DUNN,  
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 78-36271 Filed 12-28-78; 8:45 am]

[3810-71-M]

#### DEPARTMENT OF DEFENSE

Department of the Navy

#### CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE, COMMAND, CONTROL AND COMMUNICATIONS SUB-PANEL

##### Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Command, Control and Communications Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on January 17-18, 1979, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on both days. All sessions of the meeting will be closed to the public.

The entire agenda will be devoted to discussions of United States and Soviet weapons, sensors, and concepts of operations, and related intelligence. The agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b (c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander Robert B. Vosilus, USN, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, VA 22029, telephone number (202) 694-3191.

Dated: December 21, 1978.

P. B. WALKER,  
*Captain, JAGC, U.S. Navy,*  
*Deputy Assistant Judge Advocate General (Administrative Law).*

[FR Doc. 78-36254 Filed 12-28-78; 8:45 am]

[3810-71-M]

#### SECRETARY OF THE NAVY'S ADVISORY BOARD ON EDUCATION AND TRAINING (SABET)

##### Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C., App. I), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training (SABET), will meet on January 31—February 1, 1979, at the headquarters

of the Chief of Naval Education and Training, Pensacola, Florida. Sessions of the meeting will commence at 8:30 a.m. each day and terminate at 5:00 p.m. on January 31, and terminate at 12:00 noon on February 1, 1979.

The Board will receive an update on a number of programs of continuing interest to the Board, including the SABET Subcommittee report on professional military education, the development of executive level management skills, and an overview of civilian personnel reorganization. In addition, the Board will receive a Job Oriented Basic Skills (JOBS) Training Brief. The Board will then consider and discuss SABET's involvement in order to provide recommendations to the Secretary of the Navy.

For further information concerning this meeting, contact: Dr. M. Frances Kelly, Assistant Branch head, professional Education (OP-130T), 800 North Quincy Street, Arlington, VA 22203, telephone number: (202) 694-5643.

Dated: December 21, 1978.

P. B. WALKER,  
*Captain, JAGC, U.S. Navy,*  
*Deputy Assistant Judge Advocate General (Administrative Law).*

[FR Doc. 78-36255 Filed 12-28-78; 8:45 am]

[6450-01-M]

#### DEPARTMENT OF ENERGY

Economic Regulatory Administration

#### FUEL OIL MARKETING ADVISORY COMMITTEE

##### Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fuel Oil Marketing Advisory Committee and Ad Hoc Subcommittee will meet Monday, January 22, 1979, and Tuesday, January 23, 1979, in the Executive Tower, 1405 Curtis Street, Denver, Colorado.

The Committee was established to provide the Secretary of Energy with expert and technical advice concerning the marketing of fuel oil as it relates to the development and implementation of policies and programs by the Department of Energy.

The tentative agenda for the meetings is as follows:

MONDAY, JANUARY 22, 1979

Ad Hoc Subcommittee—Tower Room—9:00 a.m. to 1:00 p.m. Consideration of programs to alleviate higher costs of energy for low-income persons.

TUESDAY, JANUARY 23, 1979

Full Committee—Gold Room—9:00 a.m. to 5:00 p.m.

- Old Business
- Advisory Committee Guidelines
- Report of the Ad Hoc Subcommittee
- Report Regarding SBA Assistance
- Report from Natural Gas Committee
- Residual Fuel Oil Marketers Committee Report

- New Business
- Remarks from Floor (10 minute rule)

The meetings are open to the public. The Chairperson of the Committee is empowered to conduct the meetings in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office (202) 252-5187, at least 5 days prior to the meetings and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C. on December 26, 1978.

TINA C. HOBSON,  
*Director, Office of Consumer Affairs.*

[FR Doc. 78-36333 Filed 12-28-78; 8:45 am]

[6450-01-M]

[ERA Docket Nos. 56516-6081-01, -02]

Stony Brook Phase I Project; Massachusetts Municipal Wholesale Electric Co.

##### Petition and Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of petition and public hearing.

SUMMARY: On November 27, 1978, the Massachusetts Municipal Wholesale Electric Company (MMWEC) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a determination, to be made prior to December 15, 1978, (1) whether or not MMWEC's Stony Brook Phase I Project powerplants are "new" or "existing" within the meaning of Section 103(a) of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (FUA) and (2) if determined by the ERA to be "new", whether pursuant to Section 902 of FUA, such powerplants qualify for any

exemptions from the prohibitions of Title II of FUA applicable to new facilities. The ERA has issued a Tentative Decision and Order in this matter, granting in part and denying in part, MMWEC's petition. The purpose of this Notice is to invite interested persons to submit written comments on this matter prior to the issuance of a Final Decision and Order by ERA. In accordance with the requirements of Section 701 of FUA, any interested party, including the DOE, may request that a public hearing be held on this matter.

DATES: Written comments and/or requests for a public hearing are due on or before February 21, 1979.

ADDRESS: Requests for a public hearing and/or 10 copies of written comments shall be submitted to: Office of Public Hearing Management, ERA Docket Nos. 56516-6081-01, -02, Department of Energy, 2000 M Street, NW., Room 2313, Washington, D.C. 20461.

#### FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

Barton House (Fuels Regulation Program Office), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 6010, Washington, D.C. 20461, Phone: (202) 254-3965.

James H. Heffernan (Office of the General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 6144, Washington, D.C. 20461, Phone: (202) 633-9236.

SUPPLEMENTARY INFORMATION: MMWEC is a subdivision of the Commonwealth of Massachusetts formed in 1975 to serve as an agent for participating municipal electric utility systems for the development of a municipal power supply program. The Massachusetts Legislature has authorized MMWEC to issue tax exempt revenue bonds and to participate in the New England Power Pool.

MMWEC plans to build five powerplants on 471 acres of land adjacent to the Westover Air Force Base, in Ludlow, Massachusetts, to be designated as the Stony Brook Energy Center, to supply the peak and intermediate load power needs of 31 municipal electric departments and systems. The powerplants which constitute MMWEC's Phase I Project are to have a total rated generating capacity of approximately 511 MW. The Phase I Project will consist of two oil-fired



simple-cycle combustion turbine peaking units (together equalling 170 MW) and a combined-cycle intermediate unit composed of three oil-fired combustion turbines which will exhaust into three heat recovery steam generators and one steam turbine (together yielding 341 MW net). These units are scheduled to be operated on No. 2 home heating oil and to start commercial operation in 1981. Approximately 4.7 miles of 345-KV transmission line will be installed to connect the Stony Brook Energy Center to the New England Power Pool transmission system.

On November 27, 1978, pursuant to Section 902(a) of FUA, MMWEC requested the ERA to determine, prior to December 15, 1978, (1) whether MMWEC's Phase I/Project powerplants are "new" or "existing" within the meaning of Section 103(a) of FUA, and (2) if determined to be "new" whether these powerplants qualify for any exemption under Title II of FUA.

In accordance with MMWEC's request for an expedited determination, ERA issued a Tentative Decision and Order pursuant to Sections 902 and 103 of FUA on December 14, 1978. ERA's action at that time was described as "tentative" to permit full compliance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* This Tentative Decision and Order may be amended or revised pending completion of the NEPA requirements and the administrative process under Section 701 of FUA.

In the Tentative Decision and Order, ERA determined that MMWEC's Phase I Project powerplants must be classified as "new" facilities under the criteria set forth in Section 103(a) of FUA as implemented by the Interim Rule governing "transitional facilities" published at 43 FR 54912, and that the powerplants are therefore subject to the prohibitions of Section 201 of FUA. ERA also decided that the evidence presented by MMWEC did not warrant a determination that the intermediate load unit planned for the Phase I Project qualifies for any exemption under Title II of FUA. ERA's Tentative Decision and Order denied MMWEC's request for an exemption for this unit without prejudice to future petitions for exemption. Subject to compliance with certain terms and conditions enumerated in the Tentative Decision and Order, and pursuant to Section 902 of FUA, ERA granted MMWEC's two Phase I Project simple-cycle peaking units an exemption under the provisions of Section 212(g) from the prohibitions of Section 201 of FUA, upon certification by officials of MMWEC that neither of the two units will be operated in excess of 1500 hours annually.

ERA hereby invites MMWEC, the people of the Commonwealth of Massachusetts and all other interested parties, in accordance with the requirements of Section 701, to submit written comments on this matter. Pending the completion of the environmental review under the National Environmental Policy Act of 1969, as required by FUA, and prior to the issuance of a Final Decision and Order by ERA, interested parties, including the DOE, may also request a public hearing or an informal conference with the ERA on this matter. A notice of a public hearing, if requested, will be published in the FEDERAL REGISTER.

In accordance with the provisions of Section 701, copies of MMWEC's petition has been transmitted to the Environmental Protection Agency and to the Federal Trade Commission for the purpose of affording those agencies an opportunity for comment and notices have been provided to the appropriate state agencies.

The public file, containing MMWEC's petition materials and ERA's Tentative Decision and Order is available for inspection upon request at the following locations and at the following times:

ERA  
Room 7202  
2000 M Street, N.W.  
Washington, D.C. 20461  
Monday-Friday  
8:00 a.m.-4:30 p.m.

DOE Regional Office  
150 Causeway Street  
Boston, Massachusetts 02114

Issued in Washington, D.C. on December 26, 1978.

DORIS J. DEWTON,  
Acting Assistant Administrator  
for Fuels Regulation, Economic  
Regulatory Administration.  
[FR Doc. 78-36331 Filed 12-28-78; 8:45 am]

#### [6450-01-M]

##### Office of Energy Technology FOSSIL ENERGY ADVISORY COMMITTEE Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fossil Energy Advisory Committee will meet Thursday, January 18, 1979, at 9:00 a.m., in the Commonwealth Ballroom at the Marriott Twin Bridges Hotel, Route 1 and Interstate I-95, Arlington, Virginia.

The purpose of the committee is to provide the Department of Energy with advice in developing through research, new and more efficient methods of mining, preparing and utilizing coal.

The following topics will be discussed: Direct Combustion of Coal, Flue Gas Cleanup, Fluidized Bed Combustion, Economic Comparisons, and Environmental Regulations. Copies of the agenda will be available at the meeting.

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office (202) 252-5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C. on December 26, 1978.

TINA C. HOBSON,  
Director,  
Office of Consumer Affairs.

[FR Doc. 78-36332 Filed 12-28-78; 8:45 am]

#### [6740-02-M]

##### Federal Energy Regulatory Commission

(Docket No. CP79-97)

##### COLUMBIA GULF TRANSMISSION CO. AND COLUMBIA GAS TRANSMISSION CORP.

##### Application

DECEMBER 21, 1978.

Take notice that on December 1, 1978, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP79-97 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas produced offshore Louisiana with Gulf Oil Corporation (Gulf), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that Gulf has gas available in Blocks 313, 314, and 331, Eugene Island Area, offshore Louisiana, where Columbia Gulf has facilities through which it can accept deliveries for the account of Columbia Gas. Columbia Gas is said to have available gas in Block 497, West Cameron Area, offshore Louisiana, which can be delivered for Gulf's account to Texas Eastern Transmission Corporation (Texas Eastern) in East Cameron Area, offshore Louisiana, or other mutually agreeable point.

The application states that Columbia Gulf would construct facilities from Block 479 West Cameron Area, to Block 480, West Cameron Area, pursuant to budget-type authorization and would deliver Columbia Gas's Block 479 gas to Texas Eastern, Transcontinental Gas Pipe Line Corporation, and Northern Natural Gas Company which would transport the gas for Columbia Gas through existing facilities for delivery to Texas Eastern in Block 245, East Cameron Area, for the account of Gulf.

Applicants propose to engage in an exchange of natural gas with Gulf to enable Columbia Gas and Gulf to receive gas from areas where they do not have facilities. Applicants and Gulf would exchange up to 15,000 Mcf gas per day on a thermal basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to

intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36310 Filed 12-28-78; 8:45 am]

#### [6740-02-M]

[Docket NOs. CS71-702, *et al.*]

##### FIRST CITY NATIONAL BANK OF HOUSTON, ET AL.

##### Applications for "Small Producer" Certificates<sup>1</sup>

DECEMBER 21, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the natural Gas Act and Section 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all

<sup>1</sup>This notice does not provide for consolidation for hearing of the several matters covered herein.

applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the commission in its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

| Docket No.    | Date Filed | Applicant                                                                                                                                                                                                                                 |
|---------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CS71-702..... | 4/10/78    | First City National Bank of Houston and George L. Nye, trustees for Janie C. Lee Trust, 2100 First City National Bank Building, Houston, Tex. 77002.                                                                                      |
| CS71-828..... | 9/14/78    | Estate of Dorothea B. Prentiss (Dorothea B. Prentiss), 730 Lane Building, Shreveport, La. 71101.                                                                                                                                          |
| CS71-1071...  | 8/7/78     | Mrs. Gayle Gilster Morgan Lee (the Gayle Anne Gilster Trust under the will of Ralph R. Gilster), P.O. Box 1315, Shreveport, La. 71102.                                                                                                    |
| CS71-1148...  | 4/10/78    | First City National Bank of Houston and George C. Nye, trustees for the Carrie Gail Stringfellow Trust and the Regan McIntyre Stringfellow Trust, 2100 First City National Bank Building, Houston, Tex. 77002.                            |
| CS71-1149...  | 4/10/78    | First City National Bank of Houston and George L. Nye, trustees for Mark Rogers Trust, 2100 First City National Bank Building, Houston, Tex. 77002.                                                                                       |
| CS71-1150...  | 4/10/78    | First City National Bank of Houston and George L. Nye, trustees for Kate Crichton Gubberman, Anne Crichton Clark, I. H. Crichton, and John Hayes Crichton, Jr., Trusts, 2100 First City National Bank Building, Houston, Tex. 77002.      |
| CS71-1151...  | 4/10/78    | First City National Bank of Houston and George L. Nye, trustees for William M. Comegys III, Alfred Glasseil Comegys, John Stafford Comegys, and Ripley Scott Comegys Trusts, 2100 First City National Bank Building, Houston, Tex. 77002. |



| Docket No.    | Date Filed | Applicant                                                                                                                                                        |
|---------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CS71-1152...  | 4/10/78    | First City National Bank of Houston and George L. Nye, trustees for Charles Stringfellow III Trust, 2100 First City National Bank Building, Houston, Tex. 77002. |
| CS72-180..... | 12/11/78   | Glen M. Neubert, Agent—d/b/a R & N Associates, 4100 McEwen Road—suite 216, Dallas, Tex. 75234.                                                                   |
| CS72-181..... | 12/11/78   | Leach Brothers, Inc., 4100 McEwen Road—Suite 216, Dallas, Tex. 75234.                                                                                            |
| CS74-123..... | 5/25/78    | Kern Co. (Anderson Oil & Gas Co., Inc.) 250 Mid America Building, Midland, Tex. 79701.                                                                           |
| CS76-391..... | 8/1/78     | Bankers Trust Co., Executor of the Estate of Raymond A. Baur (Raymond A. Baur), P.O. Box 3561, Church Street Station, New York, N.Y. 10008.                      |
| CS77-299..... | 12/15/78   | ENERCO Exploration and Management Co., 418 Market, Suite 730, Shreveport, La. 71101.                                                                             |
| CS77-392..... | 6/12/78    | Mrs. A. Z. Skeeters & W. C. Curry (A. Z. Skeeters & W. C. Curry), P.O. Box 1528, Longview, Tex. 75601.                                                           |
| CS78-699..... | 8/23/78    | Norman L. Botkin, P.O. Box 493, Charleston, W. Va. 25322.                                                                                                        |
| CS79-145..... | 12/12/78   | M. Hunter Puckett, 801 Amarillo Building, Amarillo, Tex. 79101.                                                                                                  |
| CS79-146..... | 12/12/78   | Hunter Oil Corp., 801 Amarillo Building, Amarillo, Tex. 79101.                                                                                                   |
| CS79-147..... | 12/13/78   | The Shoshone Indian Tribe and the Arapahoe Indian Tribe, both of the Wind River Reservation, Wyo., Fort Washakie, Wyo.                                           |
| CS79-148..... | 12/14/78   | Norse Petroleum (U.S.) Inc., 333 Petroleum Building, Denver, Colo. 80202.                                                                                        |

<sup>1</sup>Being noticed to reflect change in Trustee  
<sup>2</sup>Being noticed to reflect name change due to certificate holder's demise and request to further amend the certificate to include the heirs  
<sup>3</sup>Being noticed to reflect submittal of annual report form with implied request to change certificate holder  
<sup>4</sup>Being noticed to reflect change of address  
<sup>5</sup>Being noticed to reflect name change  
<sup>6</sup>Being noticed to reflect submittal of annual report form with implied request for name change due to Raymond A. Baur's demise  
<sup>7</sup>Being amended to include the names of ENERCO, Inc. and Energy Resources of Minn., Inc. as affiliates of ENERCO Exploration and Management Co.  
<sup>8</sup>Being noticed to reflect substitution of Mrs. A. Z. Skeeters for A. Z. Skeeters due to A. Z. Skeeters demise  
[FR Doc. 78-36309 Filed 12-28-78; 8:45 am]

## [6740-02-M]

[Docket No. CP79-95]

## MICHIGAN WISCONSIN PIPE LINE CO.

## Application

DECEMBER 21, 1978.

Take notice that on November 30, 1978, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-95 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern) to enable Southern to receive gas produced offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to receive from High Island Offshore System in Block 167, West Cameron Area, offshore Louisiana, up to 20,000 Mcf of natural gas per day for the account of Southern from production in Block 352, West Cameron Area, and to deliver equivalent volumes to Southern at an existing interconnection at Southern's Shadyside compressor station in St. Mary Parish, Louisiana. Applicant would charge monthly \$1.55 cents per Mcf times the contract demand of 20,000 Mcf of gas. The instant service is proposed to enable Southern to receive a supply of gas remote from its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter

finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36311 Filed 12-28-78; 8:45 am]

## [6740-02-M]

[Docket No. CP79-104]

## MIDWESTERN GAS TRANSMISSION CO.

## Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, Midwestern Gas Transmission Company (Applicant), P.O. box 2571, Houston, Texas 77001, filed an application in Docket No. CP79-104 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to install and operate certain natural gas compressors and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has filed in Docket No. CP79-22 for authorization to transport natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. In order to render such service, Applicant states that it must add 3,540 horsepower to three of its existing compressor stations located in Ohio County, Kentucky, Pike County, Indiana, and Edgar County, Illinois, and construct a new compressor station of 9,100 horsepower in Sullivan County, Indiana. The estimated cost for the proposed facilities would be \$12,444,000, which would initially come from Applicant's general fund or bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the

proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36312 Filed 12-28-78; 8:45 am]

## [6740-02-M]

[Docket No. CP79-108]

## MONTANA-DAKOTA UTILITIES CO.

## Application

DECEMBER 21, 1978.

Take notice that on December 9, 1978, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed an application in Docket No. CP79-108 pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Commission's Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing Applicant to construct, during the 12-month period commencing April 1, 1979, and operate gas-purchase facilities to enable Applicant to take into its system natural gas which would be purchased from producers or other similar sellers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems

of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed gas-purchase facilities would not exceed \$3,250,000, with the cost of no single project to exceed \$812,500, which cost Applicant would finance with internally generated funds and/or interim short-term loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36313 Filed 12-28-78; 8:45 am]

## [6740-02-M]

[Docket No. CP79-111]

## NORTHERN NATURAL GAS CO.

## Application

DECEMBER 21, 1978.

Take notice that on December 8, 1978, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed an application in Docket No. CP79-111 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas measuring facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that a gas measuring facility in the village of Pender, Nebraska, is no longer necessary because the sole user of the gas measured by the facility has ceased operations. Consequently, the village of Pender requested Applicant to remove and dismantle the facility. Applicant states that the proposed abandonment would have no effect on its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.



Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36314 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-93]

PANHANDLE EASTERN PIPE LINE CO. AND  
TRUNKLINE GAS CO.

Application

DECEMBER 21, 1978.

Take notice that on December 1, 1978 Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), 3000 Bissonnet, Houston, Texas 77001 (Applicants), filed in Docket No. CP79-98 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to transport gas for Mississippi River Transmission Company (MRT), all as more fully set forth in the application on file with the Commission and open to public inspection.

The following numbered paragraphs contain statements related in the application:

(1) MRT and ANR Storage Company (ANR), have entered into a 15-year natural gas storage agreement (storage agreement). The storage agreement provides that during each summer period (April 1 through October 31) MRT would cause to be delivered up to 3,053,000 Mcf of natural gas to ANR for storage, and during each winter period (November 1 through April 30) ANR would make thermally equivalent volumes of gas available for redelivery to MRT.

(2) MRT and Applicants, on October 12, 1978, entered into a 15-year transportation agreement (transportation agreement), commencing in April 1980, to provide part of the transportation service MRT would require to transport its gas to and from ANR's storage fields.

(3) The transportation agreement provides that:

(a) During each summer period Trunkline would reduce its existing deliveries to MRT in Clay County, Illinois, by a daily rate of up to 15,265 Mcf of natural gas, plus 2.5 percent for compressor fuel, not to exceed 3,053,000 Mcf in any one summer period, and deliver such volumes to Panhandle at Tuscola, Illinois;

(b) Panhandle would deliver those volumes to Michigan Wisconsin Pipe Line Corporation (M-W) for the account of MRT at an existing point of

interconnection between Panhandle's and M-W's systems in Defiance County, Ohio.

(c) Panhandle would receive from M-W, in each winter period, that daily amount of gas as MRT may request, and Trunkline would make daily deliveries of thermally equivalent volumes to MRT in Clay County, Illinois.

(d) For such transportation service, Applicants would charge a \$40,906 monthly fee for each month during the Summer Period, April through October, at a unit rate of 9.15 cents per Mcf. For gas redelivered to MRT during the Winter Period, November through April, MRT would pay to Panhandle a charge of 2.50 cents per Mcf. Panhandle would reimburse Trunkline 2.50 cents per Mcf for gas delivered during the Summer Period and 2.50 cents per Mcf for gas redelivered during the Winter Period through Trunkline's facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to

appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36315 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-105]

PANHANDLE EASTERN PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed an application in Docket No. CP77-105 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas for Kokomo Gas and Fuel Company (Kokomo), an existing resale customer of Applicant, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Applicant and Kokomo, on September 15, 1978, entered into an agreement pursuant to which Applicant agreed to transport for Kokomo 500 Mcf of gas per day on a firm basis, and up to 300 Mcf per day on a best efforts basis, from an existing point of interconnection between the pipeline systems of Applicant and Northern Natural Gas Company in Kiowa County, Kansas, to an existing point of interconnection between Applicant's and Kokomo's systems in Tipton, Indiana. The gas subject to the agreement would be purchased from Cabot Corporation in Texas County, Oklahoma.

The agreement's proposed monthly rate for such service would be \$3,090, with upward or downward adjustments of 20.33 cents per Mcf if the transported volumes vary from the firm amount of 500 Mcf per day. It is stated that Kokomo would reimburse Applicant 10 percent of the volumes transported to account for fuel use and loss. Further, Applicant states that it has received, as partial consideration for the proposed transportation service, the option to purchase at its Kiowa County receipt point whatever volumes of gas transported under the agreement that Kokomo does not need. The price to be paid for such sales would be the applicable area rate as determined by the Commission, plus any additional charges attributable to transporting the gas to Applicant. It is indicated.

Applicant states that it has sufficient excess capacity within its system to render the proposed service without adversely affecting its other custom-

ers. The application further states that the proposed service is the most efficient and economical way of transporting Kokomo's Texas County gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36316 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-625]

RMNG GATHERING CO.

Petition To Amend

DECEMBER 21, 1978.

Take notice that, on December 4, 1978, RMNG Gathering Co. (RMNG), 420 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203, filed in Docket No. CP77-625 a petition to amend the order issued December 6, 1977, in the same docket (order), to authorize the expansion of the transportation for and exchange of natural gas with Northwest Pipeline Corporation

(Northwest), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The following numbered paragraphs relate statements made in the instant Petition to Amend:

(1) RMNG was authorized in the order to transport for and exchange gas with Northwest pursuant to a gas transportation and exchange agreement dated February 2, 1977 (agreement). RMNG filed its first petition to amend the order on June 22, 1978, to request authorization for the transportation and exchange of natural gas from additional sources, pursuant to amendments to the agreement dated September 12, 1977, and February 20, 1978.

(2) RMNG and Northwest have further amended their agreement to increase the number of gas sources covered in their agreements. Specifically, the additional wells are, by date of the amendment:

- (a) June 21, 1978—Texas Gas Exploration Nos. 43-3, 43-4, and 22-9, Garfield County, Colorado.
- (b) July 18, 1978—Culver Gov't No. 1, Mesa County, Colorado, and Federal 2-3-8-104, Garfield County, Colorado.
- (c) October 3, 1978—Palmer Federal Nos. 6-3, 6-13, and 18-2, Garfield County, Colorado.
- (d) October 5, 1978—Palmer Federal Nos. 5-3 and 29-16, Garfield County, Colorado; Palmer Federal No. 33-13, Grand County, Utah.
- (e) October 6, 1978—Ferguson No. 3-9, Garfield County, Colorado.

(3) RMNG and Northwest, on October 4, 1978, amended their agreement to reflect the addition of certain acreages which would be subject to the agreement; these acreages are located in Grand County, Utah, and Garfield County, Colorado.

(4) The transportation charge of 8.0 cents per Mcf of gas which RMNG is presently authorized to receive from Northwest would remain the same for the additional volumes of gas from the wells listed in paragraph (2) above.

(5) The wells listed in paragraph (2) above are expected to increase the deliveries to Northwest for exchange by RMNG from 950 to 4,380 Mcf of gas per day.

(6) Northwest would construct any necessary jurisdictional facilities pursuant to the budget-type certificate authorization issued to it in Docket No. CP77-507.

RMNG seeks an amendment to the order to authorize the transportation and exchange of natural gas pursuant to the agreement, as amended on June 21, July 18, October 3, 4, 5, and 6, 1978.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 12, 1979, file with the Federal Energy Regulatory Commis-

sion, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 78-36317 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-102]

SOUTHERN CALIFORNIA LNG TERMINAL CO.

Application

DECEMBER 21, 1978.

Take notice that on December 4, 1978, Southern California LNG Terminal Company (SoCal), 523 West Sixth Street, Los Angeles, California 90014, filed in Docket No. CP79-102 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of liquefied natural gas (LNG) terminal facilities at Deer Canyon, Ventura County, California, as more fully set forth in the application on file with the Commission and open for public inspection.

The following numbered paragraphs contain statements related in the application:

(1) SoCal has received assured commitments of LNG delivery from Ecuador in excess of the vaporous equivalent of 5,000,000 Mcf per day and from Saudi Arabia of the vaporous equivalent of 1,500,000 Mcf per day. SoCal anticipates LNG deliveries from Indonesia of the vaporous equivalent of 546,000 Mcf per day, the amount previously committed by that country to the United States. SoCal also anticipates deliveries of Alaska LNG in the volumes to be released for delivery to California, in the event LNG is forthcoming from Alaska.

(2) SoCal proposes to construct and operate at Deer Canyon, Ventura County, California, facilities to receive, unload, store, vaporize and transport imported and/or domestic LNG. These facilities are:

(a) *Terminal facilities*, which would have the capability of receiving, unloading, storing, and vaporizing LNG transported by ship to Deer Canyon.



This facility would have an initial daily capacity of 1,300,000 Mcf of natural gas with a daily peaking capacity of an additional 300,000 Mcf. The design contemplates expansion to a daily capacity of 5,000,000 Mcf, and an additional daily peaking capacity of 1,000,000 Mcf.

(b) *Pipeline facilities*, which would consist of 62.5 miles of 32-inch pipeline to be constructed from Deer Canyon to the existing facilities of other pipeline systems. Although existing pipeline facilities would be utilized to the greatest extent possible, SoCal anticipates that some additional pipeline facilities may be required, for which additional filings would be made.

(3) Western LNG Terminal Associates has now pending in Docket No. CP75-10 an application similar to that requested herein for authorization to construct and operate an LNG terminal at Point Conception, California.

SoCal has not yet stated the estimated cost of the proposed facility.

SoCal proposes to offer its services to all qualified companies having potentially viable LNG projects if those companies desire to avail themselves of such services, subject to obtaining requisite regulatory authorizations and the ability to finance the facilities required.

SoCal states that it seeks conditional approval for its proposals, with the condition being the need for further and future authorization by the Commission of applications which would be filed by the future customers of SoCal for its services. SoCal indicates that as the Commission approves the applications of its customers, SoCal would file additional information with the Commission so that it may evaluate the continuing development of the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Com-

mission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein. If the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SoCal to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36318 Filed 12-28-78; 8:45 am)

[6740-02-M]

(Docket No. CP79-101)

TENNESSEE GAS PIPELINE CO., A DIVISION OF  
TENNECO INC.

Application

DECEMBER 21, 1978.

Take notice that on December 4, 1978, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-101 an application pursuant to section 7(c) of the Natural Gas Act and §157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction and acquisition, during the calendar year 1979, and operation of facilities to take natural gas which will be purchased from producers and other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system and to the systems of other natural gas companies authorized to transport for or exchange with Applicant supplies of natural gas in areas generally coextensive with such systems.

The instant application does not set forth proposed total or single project expenditure limitations. Applicant states that it requests a waiver of §157.7(b)(1)(ii) of the Regulations under the Natural Gas Act (18 CFR 157.7(b)(1)(ii)). In the form of notice included pursuant to §157.6(b) of the regulations under the Natural Gas Act (18 CFR 157.6(b)), Applicant sets forth a proposed total project expenditure limitation of

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein. If the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary

(FR Doc. 78-36319 Filed 12-28-78; 8:45 am)

[6740-02-M]

(Docket No. RA79-3)

TEXACO, INC.

Filing of Petition for Review

DECEMBER 21, 1978.

Take notice that Texaco, Inc. (Texaco) on December 1, 1978, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of Secretary of Energy issued on October 4, 1978, denying in part, Texaco's request for exception relief.

Copies of the petition for review have been served on the Secretary, De-

\$12,000,000 and proposed single onshore and offshore project expenditure limitations of \$1,500,000 and \$2,500,000, respectively.

partment of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before January 5, 1979 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36320 Filed 12-28-78; 8:45 am)

[6740-02-M]

(Docket No. CP74-33)

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition to Amend Further

DECEMBER 21, 1978.

Take notice that on December 6, 1978, Transcontinental Gas Pipe Line Corporation (Petitioner), Post Office Box 1396, Houston, Texas 77001, filed in Docket No. CP74-33 a petition to amend further the order issued February 26, 1975, as amended, in Docket No. CP74-33 pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in storage allocation at the Washington Storage Field, St. Landry Parish, Louisiana, for one of its customers, Eastern Shore Natural Gas Company (Eastern Shore), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that Eastern Shore desires to increase its allocations of Washington Storage field service by 160,000 dekatherms (dt) equivalent of natural gas in the 1979-80 season and by 70,000 dt in the 1980-81 season in order to transfer some of its summer gas supply to winter operations for projected high priority sales. Petitioner further states that no additional facilities are required to render the additional service, for which Eastern Shore has executed a service agreement under Rate Schedule WSS.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a peti-

This proceeding was commenced before the FCC. By joint regulation of October 1, 1977 (10 CFR 1000.1) it was transferred to the Commission.

tion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,  
Secretary.

(FR Doc. 78-36321 Filed 12-28-78; 8:45 am)

[6740-02-M]

(Docket No. CP79-96)

UNITED GAS PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed an application in Docket No. CP79-96 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport gas for Natural Gas Pipeline Company of America (Natural), and to construct the necessary facilities therefor, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Natural and Applicant, on November 1, 1978, executed an agreement which provides for Applicant to transport up to 50,000 Mcf per day, less an allowance for fuel and company-used gas, from delivery points in Cameron Parish and Vermilion Parish, Louisiana, to a proposed point of interconnection between the parties' systems in Panola County, Texas. Applicant proposes to construct the necessary facilities in Panola County at a cost of \$28,105. The proposed transportation service would end upon the completion of the pipeline facilities proposed by Natural in Docket No. CP78-524, or one year from the date of the initial delivery, whichever is earlier. The rate agreed upon by the parties is 23.29 cents per Mcf of gas, or any superseding effective rate.

The proposed transportation service is stated to be necessary until Natural's facilities proposed in Docket No. CP78-524 are completed, to enable Natural to avoid the minimum-day violation and take-or-pay exposure of certain gas purchase contracts, and to

allow more efficient use of its gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein. If the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,  
Secretary

(FR Doc. 78-36322 Filed 12-28-78; 8:45 am)

[6740-02-M]

(Docket No. CP79-103)

UNITED GAS PIPE LINE CO. AND MICHIGAN  
WISCONSIN PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 5, 1978, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 and Michigan Wisconsin Pipe Line Company (Mich-Wis), One Woodard Avenue, Detroit, Michigan 48226, hereinafter referred to as Applicants, filed in Docket No. CP78-103 an application pursuant to section 7(c) of the Natural Gas Act for a certificate



of public convenience and necessity seeking authorization to construct and operate pipeline and related facilities necessary to connect gas supplies located in High Island Blocks A-279 and A-288, offshore Texas, to the pipeline system of High Island Offshore System (HIOS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The following numbered paragraphs contain statements related in the application:

(1) Applicants have purchased interests in natural gas supplies in Blocks A-279 and A-288, High Island Area, offshore Texas. Block A-279 interests are equally shared by Applicants; Block A-288 interests are divided as follows: 20% to United, 15% to Mich-Wis, and 50% uncommitted.

(2) To transport these supplies to shore, Applicants propose to construct and own approximately 2.4 miles of 12-inch pipeline and related facilities to connect Block A-279 to a sub-sea tap on HIOS 36-inch pipeline in Block A-280. HIOS has been authorized to transport gas for Applicants and others in Docket Nos. CP75-16, CP75-81, and CP75-104.

(3) United would be the agent of Mich-Wis in the construction of the proposed facilities, but Mich-Wis would operate them once constructed. Applicants have not yet finalized their exact relationship in regard to construction, operation and cost.

(4) The cost of the proposed facilities would be \$2,966,323 and would be financed by Applicants from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further

notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMBS,  
Secretary.

[FR Doc. 78-36323 Filed 12-28-78; 8:45 am]

#### [6570-06-M]

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, certain functions relating to equal employment opportunity in the Federal Government will be transferred from the Civil Service Commission to the Equal Employment Opportunity Commission. For further details of the transfer and the regulations to remain in effect after January 1, see FR Doc. 78-36273 published elsewhere in today's FEDERAL REGISTER.

Notice is hereby given that effective January 1, 1979, requests, inquiries, and communications of the following nature are to be addressed to the Director, Office of Field Services, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506:

(1) Agency requests for reimbursable investigations pursuant to FPM Letter 713-21.

(2) Agency requests for assignment of a complaints examiner on a reimbursable basis pursuant to 5 CFR 713.218(a) (new 29 CFR 1613.218(a)).

(3) Agency's remittance of class complaints pursuant to 5 CFR 713.604(a) (new 29 CFR 1613.604(a)).

(4) Agency reports concerning pre-complaint counseling and the status and disposition of complaints required by 5 CFR 713.241 (new 29 CFR 1613.241) and monthly agency reports on all pending complaints required by 5 CFR 713.220(c) (new 29 CFR 1613.220(c)).

(5) Agency's remittance of reprisal charges and reports of actions taken thereon required by 5 CFR 713.262(b)(1) (new 29 CFR 1613.262(b)(1)).

(6) Charging party's submission of a written statement on a reprisal charge on which the agency has not completed an inquiry within 15 calendar days of receipt as provided at 5 CFR 713.262(b)(1) (new 29 CFR 1613.262(b)(1)).

(7) Notice of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act as described at FPM Letter 713-30.

All requests, inquiries, and communications regarding the Equal Employment Opportunity Plans described at FPM Letter 713-40 are to be addressed to: Director, Office of Government Employment, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

All appeals of agency decisions and communications concerning such appeals are to be addressed to: Director, Office of Appeals and Review, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

Agency reports under the Minority Group Statistics System as required at 5 CFR 1613.302(e) should continue to be sent to the Civil Service Commission.

Signed this 15th day of December, 1978.

ELEANOR HOLMES NORTON,  
Chair, Equal Employment  
Opportunity Commission.

[FR Doc. 78-36274 Filed 12-28-78; 8:45 am]

#### [6712-01-M]

### FEDERAL COMMUNICATIONS COMMISSION

#### Radio Technical Commission for Marine Services

#### MEETINGS

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 73 "Minimum Performance Standards (MPS) Marine Omega Receiving Equipment"  
Notice of 5th Meeting, Tuesday, January 16, 1979—9:30 a.m.

Conference Room  
Maritime Institute of Technology & Graduate Studies (MITAGS)  
5700 Hammonds Ferry Road  
Linthicum Heights, Maryland 21090

#### AGENDA

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Reports of Working Groups.
4. Review of draft MPS.

M. H. Carpenter, Co-Chairman  
CDR T. P. Nolan, Co-Chairman  
Maritime Institute of Technology & Graduate Studies  
Linthicum Heights, Maryland 21090

Phone: (301) 636-5700

#### Executive Committee Meeting

The next Executive Committee Meeting will be on Thursday, January 18, 1979, 9:30 a.m. in Conference Room 7200, Nassif Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

#### AGENDA

1. Call to Order.
2. Administrative Matters.
3. Discussion and possible vote on Petition to Amend By Laws, Article IV, Section 1.
4. Discussion and possible vote on Resolution to Amend Constitution, Article VI, Section 8.
5. Acceptance of FY-78 Audit Report.
6. New business.

Special Committee No. 71 "VHF Automated Radiotelephone Systems"  
Notice of 14th Meeting, Tuesday, January 23, 1979—10:00 a.m. (Full day meeting)  
Conference Room A-110  
1229—20th Street, N.W.  
Washington, DC

#### AGENDA

1. Call to Order.
2. Administrative Matters.
3. Presentation and Discussion:
  - (a) Digital Seicall Functions and Formats
  - (b) Implementation and Cost

John J. Renner, Chairman SC-71  
Advanced Technology Systems, Inc.  
3426 N. Washington Blvd.  
Arlington, VA 22201  
Phone: (703) 525-2664

Special Committee No. 74 "Digital Selective Calling"  
Wednesday, January 24, 1978—9:30 a.m. (Full-day meeting)  
Conference Room 7200—Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.  
Notice of 1st Meeting.

#### AGENDA

1. Review of Terms of Reference.
  2. Committee Organization.
  3. Establishment of meeting schedule.
- Captain B. F. Hollingsworth, Chairman, SC-74  
U.S. Coast Guard Headquarters  
Washington, D.C.  
Phone: (202) 426-1345

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

FEDERAL COMMUNICATIONS  
COMMISSION.

WILLIAM J. TRICARICO,  
Secretary.

[FR Doc. 78-36808 Filed 12-28-78; 8:45 am]

#### [6712-01-M]

### TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: December 18, 1978.

Released: December 20, 1978.

Notice is hereby given, pursuant to Section 1.572(c) of the Commission's Rules, that on January 31, 1979, the TV broadcast applications listed in the attached Appendix will be considered ready and available for processing. Pursuant to Sections 1.227(b)(1) and 1.591(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on January 30, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on January 30, 1979.

Any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to Section 309(d) (1) of the Communications Act of 1934, as amended, is directed to Section 1.580(l) of the rules which specifies the time for filing and other requirements relating to such pleadings.

BPCT-5227 (new), Boulder, Colo., FAMILY TELEVISION, INC., Channel 14. ERP: Vis. 900 kW; HAAT: 484 ft.  
BPCT-7807201B (KTVO-TV), Kirksville, Mo., KTVO, INC., Channel 3. Change transmitter location; change ERP. Vis. to 84 kW; and change HAAT to 1973 ft.  
BPCT-7808101A (new), New Orleans, La., LESTER SUMRALL EVANGELISTIC ASSOCIATION, INC., Channel 20. ERP: Vis. 3160 kW(M); HAAT: 997 ft.  
BPCT-780901KF (new), Albany, N.Y., American International Communications Corp., Channel 23. ERP: Vis. 5000 kW; HAAT: 1200 ft.  
BPCT-780907KP (new), Palm Beach, Fla., WILSHIRE CORP., Channel 53. ERP: Vis. 822 kW; HAAT: 478 ft.  
BPCT-781002KL (new), Ventura, Calif., KEMO-TV, INC., Channel 16. ERP: Vis. 5.25 kW; HAAT: 755 ft.  
BPCT-781005KE (new), Mt. Clemens, Mich., ADELL BROADCASTING CORP. ERP: Vis. 1243 kW; HAAT: 614 ft.  
BPCT-781005KF (new), Seaford, Del., JOHN R. POWLEY, Channel 38. ERP: Vis. 259 kW; HAAT: 317 ft.  
BPCT-781106KE (new), Casper, Wyo., THE CHRYSOSTOM CORP., Channel 14. ERP: Vis. 1456 kW; HAAT: 1887 ft.  
BPCT-781107KE (new), Joliet, Ill., LAGO GRANDE TELEVISION CO., Channel 66. ERP: Vis. 4,170 kW; HAAT: 1,460 ft.  
BPCT-781109KE (new), Eau Claire, Wis., LIBERTY TELEVISION, INC., Channel 18. ERP: Vis. 500 kW; HAAT: 744 ft.  
BPCT-781113KE (new), El Centro, Calif., PACIFIC MEDIA CORP., Channel 7. ERP: Vis. 316 kW; HAAT: 1408 ft.  
BPCT-781113KF (WNNE-TV), Hanover, N.H., NORTHERN NEW ENGLAND

TELEVISION, Channel 31. Change ERP. Vis. 2240 kW(M); HAAT: 2230 ft.  
BMPCT-781103KG (WLFL-TV), Raleigh, N.C., CAROLINA CHRISTIAN COMMUNICATIONS, INC., Channel 22. Change transmitter location; change studio location; change ERP. Vis. to 1158 kW; and HAAT: 1148 ft.  
BPCT-5225 (new), Vallejo, Calif., REDWOOD TELEVISION MINISTRIES, INC., Channel 66. ERP: Vis. 669 kW; HAAT: 1592.1 ft.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
Secretary.

[FR Doc. 78-36227 Filed 12-28-78; 8:45 am]

#### [6720-01-M]

### FEDERAL HOME LOAN BANK BOARD

[No. 78-739]

#### FEDERAL CHARTERING AUTHORITY FOR MUTUAL SAVINGS BANKS

#### Announcement of Informal Public Hearings and Solicitation of Written Views and Comments

DECEMBER 22, 1978.

AGENCY: Federal Home Loan Bank Board ("Bank Board").

ACTION: Announcement of informal public hearings and solicitation of written views and comments.

SUMMARY: Title XII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Act of November 10, 1978, P.L. No. 95-630, 92 Stat. 3641), goes into effect on March 11, 1979. It authorizes the Bank Board to issue, if not in contravention of State law, Federal charters to existing State-chartered mutual savings banks and to provide for the examination, operation, and regulation, of any mutual savings bank which has converted to Federal charter.

The Bank Board feels that it is in the public interest for it to elicit the views and comments of all interested parties on the manner in which the Bank Board should exercise the authority and responsibility conferred by Title XII.

PROCEDURES: The procedures with respect to the conduct of the public hearings and the solicitation of written views and comments will be:

Each person or representative of a group who wishes to submit written views or comments may do so. Written material will be sent to the Bank Board, Office of the General Counsel (address below) and must be received by 5:30 p.m. EST, January 22, 1979.

Written views and comments may be submitted without participation in the public hearing; submission of views and comments does not bar participation in the public hearing.



Each person or representative of a group who wishes to make a presentation must make a request to do so in writing. A written copy of a statement or a summary of points to be covered must accompany the request. Requests and accompanying material will be sent to the Bank Board, Office of the General Counsel (address below) and must be received by 5:30 p.m. EST, January 22, 1979.

Written views and comments, statements, and summaries of points to be covered will be available for public inspection at the Bank Board, Office of the General Counsel (address below) when received.

Participants will be notified by January 24, 1979, of their order of appearance. A list of participants, and their order of appearance, will be available for public inspection at the Bank Board, Office of the general Counsel (address below) after this date.

The presiding Hearing Officer will have complete charge of the hearings and authority to do all things necessary and proper for the orderly conduct of the hearings. The Hearing Officer may exclude testimony, data and material which is deemed improper, irrelevant or repetitive.

Normally, a maximum of 15 minutes will be allowed for individuals and 30 minutes for group representatives. To the extent possible, groups having substantially similar positions are encouraged to select just one representative.

Hearing participants will not be permitted to examine or cross-examine other participants, although the Hearing Officer may question participants for the purpose of obtaining a fuller exposition of their views.

There shall be no provision for briefs or for oral argument at the conclusion of the hearings.

The foregoing rules may be relaxed by the Hearing Officer, if in his or her judgment such relaxation would aid the Bank Board in reaching a decision on the merits of proposals. If deemed necessary, the Hearing Officer may also extend the hearings or schedule additional hearings.

The hearing proceedings shall be transcribed. All interested parties may, after the close of the hearings and as soon as the transcript of the hearings has been prepared, obtain copies of the transcript through the procedure set out in Part 505 of the General Regulations of the Bank Board (12 C.F.R. Part 505).

**ADDRESSES—TIME AND DATE OF HEARING:** All written communications should be directed to the Bank Board, Office of the General Counsel, 1700 G Street, N.W., Washington, D.C. 20552. Please legend all communications: "Federal Mutual Savings Bank Project".

The public hearings will begin at 9:00 a.m. EST in the Amphitheater on the second floor of the Bank Board building at 1700 G Street, N.W., Washington, D.C., January 26, 1979. Unless the hearing is extended or re-scheduled in accordance with the above procedures, the hearing will end at 5:30 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Loren J. Friesen, Attorney, Bank Board, Office of the General Counsel, Washington, D.C.; phone: (202) 377-6454.

**SUPPLEMENTARY INFORMATION:** The Bank Board specifically invites interested parties to comment on the following issues:

1. Section 1202 of Title XII provides that in issuing charters for Federal savings and loan associations and Federal mutual savings banks that the Bank Board shall give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States". How may the Bank Board insure that a Federal mutual savings bank will be committed to home-financing? Should there be, for example, a minimum residential mortgage to total asset ratio that the Bank Board should require of applicants for a Federal mutual savings bank charter?

2. Should the Bank Board adopt the "trustee" or "trustee and corporator" system of management for Federal mutual savings banks, or should savings accountholders, checking accountholders, where permitted, or borrowers be accorded membership voting privileges with the right to elect a governing board of directors or trustees? If the latter, what should be the extent of their voting privileges?

3. Should the governing boards, officers and other employees of Federal mutual savings banks be subject to the same conflict of interest and related rules as pertained to the institution with which they are affiliated when it held a State-charter, if such rules are more restrictive than those currently applicable to Federal insured savings and loan associations?

4. In the event of liquidation of a Federal mutual savings bank, or other situation wherein the priority of accountholders is at issue, should checking accounts have the same priority as savings accounts, and the same right to a pro-rata participation in the distribution of the institution's assets?

5. To what extent should the Bank Board apply its existing Federal and Insurance Regulations (12 C.F.R. Part 541 et seq. and Part 561 et seq.) to Federal mutual savings banks? With respect to what issues may new regulations be required?

6. What criteria should the Bank Board consider in acting upon an application for a Federal mutual savings bank charter?

7. Should the Bank Board in any way restrict, or qualify the grandfathering authority conferred by Title 12? The aforementioned issues should not be considered exclusive, and comments on other related questions to the Bank Board's Title XII authority will be welcomed.

By the Federal Home Loan Bank Board.

J. J. FINN,  
Secretary.

[FR Doc. 78-36256 Filed 12-28-78; 8:45 am]

[6730-01-M]

#### FEDERAL MARITIME COMMISSION

##### Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by January 8, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair, as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done:

Agreement No.: T-3752.

Filing Party: Mr. Gary T. Ferrulli, Director, Regulatory Affairs, Sea-Land Service, Inc., 10 Parsonage Road, P.O. Box 900, Edison, N.J. 08817.

Summary: Agreement No. T-3752, between Hanjin Container Lines, Co., Ltd., (Hanjin) and Sea-Land Service, Inc., (Sea-

Land), is a Terminal Service Agreement whereby Sea-Land agrees to perform terminal services for Hanjin's vessels at the port facilities of Kobe and Yokohama, Japan. Sea-Land shall provide berth space, yard space, container gantry cranes, and adequate facilities and rolling stock for the handling of containers. Sea-Land shall perform the following services for Hanjin: arranging for the entry and clearance of vessels, vessel clearance documentation, vessel berthing and related services, arranging for the survey and repair of vessels, stevedoring services, documentation, maintenance and repair of containers/chassis, Container Freight Station services, and assisting Hanjin in contracting with third parties for inland transportation of containers and cargo. As compensation, Hanjin shall pay Sea-Land according to a schedule of rates outlined in the agreement.

By Order of the Federal Maritime Commission.

Dated: December 22, 1978.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 78-36224 Filed 12-28-78; 8:45 am]

[1610-01-M]

#### GENERAL ACCOUNTING OFFICE

##### REGULATORY REPORTS REVIEW

##### Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 21, 1978. Set 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 16, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

#### INTERSTATE COMMERCE COMMISSION

The ICC requests clearance of revised Annual Report, Form R-4, re-

quired to be filed by some 103 railroad lessors, pursuant to Section 20 of the Interstate Commerce Act. Data are used for economic regulatory purposes. Revisions made in this annual report form resulted from the adoption of Docket No. 36367, Revision to the Uniform System of Accounts (49 CFR 1201), decided June 13, 1977. New schedule numbers and account reference changes are the only significant changes. The ICC estimates reporting burden for carriers will average 233 hours per report. Reports are mandatory and available for use by the public.

NORMAN F. HEYL,  
Regulatory Reports,  
Review Officer.

[FR Doc. 78-36287 Filed 12-28-78; 8:45 am]

[6820-23-M]

#### GENERAL SERVICES ADMINISTRATION

##### Public Buildings Service

[GSA Order PBS 1095.1D]

#### IMPLEMENTATION OF ENVIRONMENTAL POLICY

##### Preparation Procedures

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and Section 1500.3(a) of the Council on Environmental Quality Guidelines for the Preparation of Environmental Impact Statements (38 FR 20550), notice is hereby given that the General Services Administration, Public Buildings Service, has revised internal procedures for preparing environmental impact statements for facility planning programs. These programs include acquisition, leasing, design, construction, management, and alteration of GSA property.

Dated: December 7, 1978.

JAMES B. SHEA, Jr.,  
Commissioner,  
Public Buildings Service.

DECEMBER 7, 1978.

#### GSA ORDER

Subject: Implementation of environmental policy.

##### 1. Purpose.

a. This order implements GSA Order ADM 1095.1B by prescribing procedures for Public Buildings Service (PBS) facility planning programs in acquisition, leasing, design, construction, management, and alterations to General Services Administration (GSA) property.

b. This order shall be further implemented by the publication of a service order for each region of the Public Buildings Service. Each regional service order shall be applicable to PBS facility planning programs in acquisition, leasing, design, construction, management, and alteration to GSA property.

Each regional service order shall be approved by the Assistant Commissioner for Space Management (PR) prior to its implementation.

2. Cancellation. PBS Order 1095.1C is canceled.

##### 3. Background.

a. The laws, Executive Orders, and directives to be implemented include the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321, et seq., herein after referred to as NEPA); Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality;" section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); Executive Order 11593 of May 13, 1971, entitled "Protection and Enhancement of the Cultural Environment;" GSA Order ADM 1095.1B, entitled "Environmental considerations in decisionmaking;" GSA Order PBS 1022.1, entitled "Protection of Historic Properties;" Executive Order 12088 of October 13, 1978, entitled "Federal Compliance with Pollution Control Standards;" and the Guidelines issued by the Council on Environmental Quality (CEQ) for preparing environmental impact statements, (herein after referred to as the Guidelines), published in the FEDERAL REGISTER August 1, 1973, 38 FR 20550, and amended in the FEDERAL REGISTER on August 7, 1973, 38 FR 21265.

b. Section 102 of NEPA directs all Federal agencies to the fullest extent possible: (1) to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment; (2) to identify and develop methods and procedures which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; (3) to include in every recommendation or report on proposal for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official which includes to the fullest extent possible the following:

(a) The environmental impact of the proposed action;

(b) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(c) Alternatives to the proposed action;

(d) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(e) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

c. Executive Order 11514 effectuates the purpose of NEPA, and the revised Guidelines implement NEPA.

4. Nature of revision. This revision reflects GSA organizational changes, the transfer of certain responsibilities from CEQ to EPA, and recently issued directives concerning the change in environmental impact statement filing procedures.

##### 5. Procedures.

a. Environmental assessments, negative declarations, draft and final EIS's prepared under the direction of the Regional Commissioners on planning, acquisition, and alteration programs shall be submitted to the



Assistant Commissioner for Space Management (PR). The Assistant Commissioner for Space Management (PR) shall forward copies to the Office of General Counsel (L), and other appropriate offices. All such review periods shall run concurrently for a period of 10 workdays from the date of receipt for negative declarations and environmental assessments. The review period shall be 15 workdays from the date of receipt for draft and final EIS's. Any requests for additional information or revision shall be directed to the appropriate service or staff office program official. All comments shall be forwarded to the Assistant Commissioner for Space Management. All comments so forwarded shall be prepared in a consolidated response to the region. The Commissioner, PBS (P), shall reconcile any differences concerning the need for additional information or revision that may arise between program officials and other reviewing offices, except that final approval for legal sufficiency shall be the responsibility of the General Counsel or his designee. Environmental assessments shall be attached to negative declarations. Unless otherwise notified within 10 workdays from receipt of the negative declaration-environmental assessment and 15 workdays from receipt of the draft EIS or final EIS, the Assistant Commissioner for Space Management, and/or the regional office shall assume the environmental assessment and negative declaration or draft EIS or final EIS are adequate.

b. The Regional Administrator shall retain the nondelegable authority, subject to the terms and details herein, for final approval of negative declarations and both draft and final EIS's. Further, the Regional Administrator maintains the responsibility for transmitting draft and final EIS's to the Environmental Protection Agency (EPA), heads of other Federal agencies, Governors, Senators, and Congressmen. The preparation of EIS's shall be in cooperation and coordination with all appropriate PBS officials. Distribution of EIS's shall be carried out consistent with the terms and conditions of GSA Order ADM 1095.1B. Regional offices shall also maintain responsibility for responding to substantive comments received on the draft EIS and for the preparation and publication of the final EIS. Additional procedures for the implementation of this order are contained in the attachment of this order.

6. Reports. The reports control symbol PBS-123 has been assigned to the report required by this directive.

JAMES B. SHEA, Jr.,  
Commissioner,  
Public Buildings Service.

Figure 1. Supplemental distribution

| Office                   | Copies |
|--------------------------|--------|
| All Regional PG's.....   | 15     |
| Central Office, PRE..... | 80     |

#### ATTACHMENT

#### IMPLEMENTATION OF ENVIRONMENTAL POLICY

1. Responsible officials for determining the course of environmental action. The Regional Commissioners, PBS, have the initial responsibility for making the threshold decision for (1) determination whether an action is "a major Federal action significantly affecting the quality of the human environment", and (2) the preparation and documentation of files with environmental impact assessments (EIA), EIA's resulting in negative declaration or draft and final environmental impact statements (EIS). The PBS Assistant Commissioners, may request the preparation of EIA's or draft and final EIS's from the Regional Commissioners. However, when the proposed action has been designated as a project pursuant to GSA Order, Project Management in the Public Buildings Service (ADM 5400.24), such determination shall be made only after consultation with the Project Manager.

a. Assistant Commissioner for Space Management (PR), is responsible for the overall direction of environmental protection within GSA and those policy and procedure programs listed in (par. 1 of the transmittal order PBS 1095.1D) and the following:

(1) Provide professional and technical guidance to the Commissioner, PBS (P), Assistant Commissioners, PBS, and Regional Commissioners, PBS;

(2) Review, coordinate and consolidate the PBS EIA/EIS review comments by the Office of General Counsel (L), and other appropriate service and staff offices and transmit such comments to the appropriate office;

(3) Consult with the Office of General Counsel (L) on matters pertaining to compliance with environmental laws within GSA and on matters relating to environmental protection in PBS;

(4) Develop and coordinate service orders, regulations and guidance on the PBS environmental programs;

(5) Assist the regional offices in scheduling environmental considerations to preclude delays in completing those actions defined in this attachment;

(6) Review new environmental technology, research and development; and

(7) Initiate new environmental programs.

b. Regional Administrators shall have the following responsibilities to:

(1) Approve by signature negative declarations prepared by the Regional Commissioners, PBS; and

(2) Transmit draft and final EIS's to the Environmental Protection Agency (EPA), heads of other Federal agencies, Governors, Senators, and Congressmen by signing appropriate transmittal letters.

c. Regional Commissioners, PBS, shall have the following responsibilities to:

(1) Make the threshold decision of need for an EIA/EIS, and prepare and sign negative declarations that require the subsequent approval of the Regional Administrator;

(2) Maintain a continuing review of activities which have potential significant environmental impact as outlined in this attachment to the order;

(3) Establish the appropriate points in time for the reassessment of developing projects for cases not covered in this attachment to the order;

(4) Prepare and process, through PR, draft and final EIS's and subsequently distribute the EIS's to Federal, State, and local officials, and interested individuals other than those to whom the Regional Administrator transmits the impact statement;

(5) Conduct public meetings, issue press announcements and maintain files for public review; and

(6) Prepare and monitor a schedule for environmental planning considerations to pre-

clude delays in completing those actions defined in this attachment;

(7) Review new environmental technology, research and development;

(8) Initiate new environmental programs;

(9) Develop and publish a regional service order that further implements this order; and

(10) Prepare and submit to PR quarterly reports on regional NEPA actions.

d. The Assistant Commissioners for Buildings Management (PB) and Construction Management (PC), shall be responsible for maintaining program review of EIS's to ensure program activities are compatible with environmental protection and in compliance with GSA Order ADM 1095.1B. They are also responsible for the following:

(1) Review of new environmental technology, research and development;

(2) Initiation of new environmental programs;

(3) Development and revisions to orders, handbook specifications and directives to the field;

(4) Initiation of EIA's and EIS's;

(5) Maintenance of continuing review of developing projects for environmental impact and establish the appropriate points in time for the reassessments not covered in this attachment to the order; and

(6) Establishment of continual liaison with the Office of Space Management on environmental protection programs.

2. Determination of what is a "major Federal action significantly affecting the quality of the human environment." This determination is based on the circumstances of the proposed action. The determination shall be made as part of the decisionmaking process.

a. Types of actions which have the potential of being major Federal actions requiring an assessment of their effect on the environment are:

(1) Recommendations or reports concerning legislation, including requests for appropriations, proposed by GSA or members of Congress resulting in physical action involving, but not limited to, proposals for new Federal construction under the Public Buildings Act of 1959, as amended, (40 U.S.C. 601, et seq.).

(2) Administrative action involving:

(a) Procurement and renewal of space through major lease, lease-construction or construction of buildings for Federal agency use;

(b) Extensions, repair and alterations to public buildings;

(c) Use of GSA property through lease, permit, or license resulting in a significant change in usage of the property;

(d) Proposed exchanges of real property to acquire sites under the Public Buildings Act of 1959, as amended;

(e) Relocation of employees causing significant change in employee transportation patterns, or the travel time to the new location to exceed 45 minutes, or a 20 percent increase in travel time if it presently exceeds an average of 45 minutes;

(f) All project development reports;

(g) Site Investigation and Selection Reports.

(3) Formulation and issuance of regulations, procedures, and policies which may have environmental consequences.

b. Actions significantly affecting the quality of the human environment are those which:

(1) Impact upon the environment even if, on balance, beneficial effects outweigh the detrimental ones;

(2) Curtail the range of possible beneficial uses of the environment including irreversible and irretrievable commitments of resources;

(3) Serve short-term uses rather than long-term environmental goals;

(4) May be localized in their effect, but nevertheless, have a harmful environmental impact; and

(5) Are attributable to many small actions, possibly taken over a period of time, which collectively can be defined as a major action with a significant impact (either adverse or beneficial).

3. Changes having an impact on the quality of the human environment. A significant change is any change which significantly alters, disrupts, destroys, or transforms any aspect of the physical, social or aesthetic environment. Such a change may have either an adverse or beneficial impact on the quality of the environment.

4. Application of standards. All GSA operated and controlled facilities shall be operated in accordance with established Federal and State environmental standards. Where both substantive Federal and State standards exist, the more stringent of these standards shall apply.

5. Criteria. Factors having potential and identified impact which may significantly affect the quality of human environment include but are not limited to the following:

a. The readily recognizable physical factors; (e.g., air and water quality, ambient noise levels, sewage and waste disposal, etc.);

b. Changes in land use or zoning;

c. Socio-economic factors, (i.e., proximity to low and moderate income residential housing on a nondiscriminatory basis, necessity for relocation of residential properties, changes in traffic patterns causing changes in mode of transportation, traffic congestion or increase in distance and commuting costs to the proposed building occupants; known environmentally controversial aspects of the project); and

d. Cultural, architectural, or archeological aspects of a project illustrated by possible infringement on historic properties or disturbances to important archeological artifacts. Environmental impact assessments (EIA) and environmental impact statements (EIS) for projects that may affect historic and cultural properties shall be written to demonstrate agency compliance with section 106 of the National Historic Preservation Act of 1966 and the implementing procedures of the Advisory Council on Historic Preservation (36 C.F.R. part 800). Historic properties are defined as properties listed in the National Register of Historic Places, or determined eligible for listing in the National Register. Contact with the State Historic Preservation Officer (SHPO) shall be documented with a letter from the SHPO and included in the EIA or the appendix of the EIS. (For further clarification on historic preservation procedures and how to determine eligibility for listing in the National Register, refer to PBS 1022.1.)

6. Categorized major PBS actions. To clarify threshold decisions and to categorize typical PBS actions requiring environmental analysis, the following categories have been identified:

a. Category I. Projects which will almost always require an EIS.

(1) Facility planning program (a series of actions related by type or geographic area) such as the following:

(a) Master Plan for federally owned property; and

(b) Leasing actions planned for a given geographical area for a 3- to 5-year period.

(2) Construction Projects.

(a) Federal construction or lease construction projects requiring a prospectus.

(b) Projects undertaken for another Federal agency where the assessment process identifies significant known or potential environmental impact(s). An example of a proposed project that would always require an EIS is development of a Federal correctional center.

(c) Projects recommended under section 11(b) of the Public Buildings Act of 1959, as amended.

(3) All PBS projects where the assessment process identifies known or potential significant environmental impact.

b. Category II. Projects which normally require an environmental assessment to determine if an EIS is necessary.

(1) Federal construction or lease construction projects that do not require a prospectus, including those undertaken for another Federal agency.

(2) Repair and alteration projects.

(a) Those projects which require a prospectus.

(b) Those projects which require a major change in energy requirement or source.

(c) Those projects which affect those characteristics which qualify a property or object as historically or culturally significant.

(d) Acquisition and/or alteration of space for a laboratory which will utilize dangerous or hazardous chemicals, drugs or radioactive materials.

(3) Major leases for new space in existing buildings where a potential environmental controversy has been identified.

(4) Real property acquisition and lease acquisition expected to result in new construction.

(5) A transfer of employees that would cause a significant change in employee transportation mode, patterns, and/or travel time.

(6) Acquisition, leasing, construction, and alteration projects which are a part of a program, such as a master plan, for which an EIS has previously been filed.

(NOTE: Emergencies. Situations that may make it necessary to proceed with an action without full compliance with the provisions of this order: (1) A major action which must be undertaken immediately because of fire, public or safety hazard. The responsible regional official shall notify the Regional Counsel immediately and initiate procedures for consultation with EPA; and (2) A project in which the Commissioner, PBS (P), after consultation with EPA, has determined that a public or governmental exigency is present. This would be restricted to projects where a limited environmental impact has been identified, but where action to acquire or renovate property is neither irreversible nor irretrievable.)

7. Consideration of Cumulative Impacts. Each proposed project or action shall be reviewed and a determination made as to whether it constitutes a "major Federal action." The responsible regional official should consider that the effect of decisions can be individually limited but cumulatively significant. An environmental impact statement should be prepared if it is reasonable to expect a cumulatively significant impact on the environment from the Federal action, as indicated in the following:

a. Over a period of years, decisions by one or a number of different agencies are made concerning certain types of projects or actions that individually are minor but collectively are major;

b. One decision involving a limited amount of money establishes a precedent for action in much larger cases or represents a decision in principle about a future major course of action; and

c. Several Government agencies individually make decisions about partial aspects of a major action.

8. Environmental impact assessments (EIA). a. The environmental impact assessment is one of the most important documents included in the decisionmaking process. The EIA is the basis for judgment by the "responsible official" and can be entered as evidence in hearings and court actions. Therefore, it is of utmost importance that the assessment be a full disclosure document, giving the reader a clear picture of existing and projected environmental conditions, a complete but concise description of the proposed action, and an in-depth evaluation of possible or probable impacts, both primary and secondary, which may be either beneficial or adverse. The EIA must include a list of Federal, State, and local officials who have been contacted and their comments. The assessment will result in the decision to prepare a negative declaration or a draft environmental impact statement.

b. The decision to prepare an EIA shall be made immediately subsequent to the initial identification of project need during the project planning stage. Its preparation shall be undertaken concurrently with the initial technical and economic studies for each project. In lease actions the assessment shall be completed and a determination for the necessity of an EIS shall be made prior to the issuance of a solicitation for offers.

c. For Federal construction projects involving the selection of a site and for lease actions involving the acquisition of an assignable option on a site and when the site is known, the EIA shall be based on the known site. For those projects in which the site is not known, the EIA shall be based on a delineated area. If the delineated area has been determined by applying the Area Delineation Model as provided in the HB, Space Requirements and Project Development (PBS P 7000.6), the EIA shall summarize the data and findings resulting from application of the model. If the delineated area has been determined to be in conformance with FPMR 101-18.100g, the EIA shall summarize the factors considered and the manner in which the delineated area was determined. (See also the HB, Acquisition of Leasehold Interests in Real Property (PBS P 1600.1).)

d. As the project develops all environmental considerations will be reevaluated continually by the appropriate officials. The EIA shall be updated with a reassessment if there has been no significant change in project scope or environmental impact. If the initial assessment was made on a delineated area and resulted in a negative declaration, a reassessment shall be made when a site is selected. For major repair and alteration projects and new Federal construction, a reassessment shall be made when working drawings and specifications are



completed. Other reassessments shall be made as deemed necessary by the responsible officials as defined by par. 1 of this attachment. (See subpar. 9f.)

9. *Negative declaration.* a. A negative declaration is an official administrative declaration stating that an analysis of the environmental impact assessment (EIA) has been made and that the proposed action is not considered a major Federal action having a significant impact on the human environment and, therefore, will not require the preparation of an environmental impact statement.

b. When an EIA is completed by the regional staff, it shall be reviewed by the responsible regional official. If the review of the EIA indicates that the proposed project is not a major Federal action significantly affecting the quality of the human environment, then four copies of the EIA and a copy of the negative declaration signed by the Regional Commissioner, PBS, shall be submitted to the Assistant Commissioner for Space Management (PR). The original EIA and negative declaration shall remain in the regional office.

c. Upon receipt of the EIA, PR will forward copies to the Office of General Counsel (L) and other appropriate offices. All comments shall be reviewed, coordinated and consolidated by PR and transmitted to the submitting regional office within a time period not to exceed 10 full workdays from the date of receipt of the EIA by PR. A copy of the consolidated response will be forwarded to the Office of General Counsel (L). If not otherwise directed by PR within the 10-workday period, the responsible regional official may assume that the EIA is adequate and may proceed with obtaining approval of the negative declaration by the Regional Administrator. No action as defined in par. 14 shall be taken prior to the completion of the above process.

d. If during review of the assessment and negative declaration by the Office of Space Management (PR), it is determined that an environmental impact statement should be filed, the responsible regional official shall be so advised during the 10-workday period.

e. For proposed projects which require prospectus approval by the Public Works Committees of the Congress, two copies of the approved negative declaration with the environmental impact assessments attached shall be forwarded to PR so that the environmental assessment documents may accompany the prospectus to the Public Works Committees of Congress.

f. If an environmental assessment and negative declaration have been prepared on a delineated area, an updated assessment shall be prepared upon site selection. Should the responsible regional official conclude there are no known potential significant environmental impacts following the site selection stage, such official shall prepare and sign a confirmation of the negative declaration. Such confirmation shall have concurrence by the Regional Counsel. The confirmation of the negative declaration need not be forwarded to the Central office in these cases. However, should the updated assessment identify significant environmental impact on the quality of the human environment, the responsible regional official shall proceed with the preparation of the environmental impact statement and notify the Assistant Commissioner for Space Management (PR). In such cases, it may be necessary to reissue the solicitation for offers

or invitations for bid, or cancel further acquisition actions until the full EIS process is complete.

10. *Draft environmental impact statement.* a. After an environmental impact assessment has been prepared and a determination made that the proposed action is a major Federal action significantly affecting the quality of the human environment, a draft environmental impact statement (EIS) shall be prepared. In cases where the site is not known, the draft EIS shall be based on a delineated area (DA). The DA shall be determined in accordance with the Area Delineation Model as provided for in PBS P 7000.6 or determined in accordance with FPMR 101-18.100g as provided for in PBS P 1600.1. The EIS shall summarize the data and findings resulting from use of the Area Delineation Model or describe the factors considered and the manner in which the delineated areas was determined.

b. At the earliest possible stage of draft EIS preparation, the office preparing the EIS shall consult with Federal, State, and local agencies to obtain information and views about potential impacts of a proposed action. The consultation process shall be accomplished in accordance with OMB Circular A-95, CEQ Guidelines, Subpart 101-19.100 of the Federal Property Management Regulations and the following:

(1) Projects resulting in construction shall be reviewed for environmental impact. State clearinghouses shall be consulted at the earliest practicable time in the planning of the project. In the development of a Project Development Report in the region, the Regional Administrator is required to contact the appropriate State, regional and local clearinghouses and other appropriate officials including U.S. Senators and Congressmen in a formal A-95 process.

(2) In addition, a copy of the letter to the state clearinghouse, issued in accordance with the provisions of the A-95 circular shall be forwarded to the Advisory Council on Historic Preservation and the Council on Environmental Quality.

(3) When the A-95 review process of a proposed project or the consultation with the clearinghouses take place prior to the filing of a draft EIS, the comments received represent input to the EIS.

(4) Federal agency comments received prior to filing of a draft EIS shall be attached to copies of the statement being sent to the agency submitting the substantive comment. The statements being sent to the clearinghouses shall include a listing of all agencies from which comments have been received.

c. *Technical content of draft statement.* The EIS includes:

(1) A description of the proposed action including the requisite information and technical data to permit a careful assessment by reviewing agencies of the environmental impact of the proposed action(s). Copies of site plans or topographic maps showing the property and the surrounding area shall be provided;

(2) The probable impact of the proposed action(s) on the environment, including impact on biological systems (e.g., wildlife and vegetation) and on physical systems (e.g., hydrology, air, noise, etc.). Consequences of direct and indirect impacts on the environment shall be included in the analysis. For example, any effect of the action on population distribution or concentration should be estimated and an assess-

ment made of the effect of significant change in population patterns upon the resources of the impacted area (e.g., land use, water supply, public services, and traffic patterns);

(3) Any probable adverse environmental effects that cannot be avoided, such as water, air, or noise pollution, undesirable land use patterns, damage to ecological systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of NEPA. Where such unavoidable effects exist, a discussion of mitigating, neutralizing or eliminating measures should be included for each adverse effect;

(4) A rigorous exploration and objective evaluation of all reasonable alternative actions that might avoid some or all of the adverse environmental effects, including those alternatives outside of GSA's implementing authority. Analysis of alternatives, their costs, and impacts on the environment shall accompany the proposed action(s) through the agency review process to avoid premature foreclosure of options with less detrimental effects than the proposed action. If a cost benefit analysis on the proposed action(s) is prepared, it shall include a discussion of reasonable alternatives. The extent to which environmental costs have not been reflected in such analysis should be included in the EIS. However, information furnished by property owners, appraisers, or public officials regarding site pricing information, estimated site costs, appraisal reports on subsequent site selection or negotiations to acquire sites, shall not be included in draft or final EIS;

(5) The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity and a discussion of the extent to which the proposed action forecloses future options. This, in essence, requires assessment of the action(s) from the perspective that each generation is trustee of the environment for succeeding generations;

(6) Any irreversible and irretrievable commitments of resources, (i.e., land, labor, materials, natural and cultural resources), which would be involved in the proposed action(s) should it be implemented. Identify from the survey of unavoidable adverse impacts the extent to which the action(s) curtails the range of beneficial uses of the environment;

(7) A description of the extent and nature of the awareness of the action by public officials, public interest groups, neighborhood groups through newspaper articles, radio and television, meetings, public hearings, correspondence and other forms of contact; and

(8) A list of the agencies, groups, and individuals consulted in accordance with the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098), Executive Order 11512 and Office of Management and Budget Circular A-95.

11. *Submission and distribution of draft environmental impact statements.* Initially, draft EIS's shall be processed as follows:

a. Four copies of the preliminary draft environmental impact statement shall be transmitted to the Assistant Commissioner for Space Management (PR) for a review period of 15 workdays to begin the date of receipt by PR. Space Management will forward copies to the Office of General Counsel (L) and other appropriate offices. All comments will be reviewed, coordinated, and

consolidated by PR and transmitted to the submitting office within the 15-workday time period. A copy of the consolidated response will be forwarded to the Office of General Counsel. Space Management may require additional information or revisions to the statement prior to its publication. If not otherwise directed by PR within the 15-workday review period, the responsible official may assume that the EIS is adequate and may proceed with publication of the EIS. A statement number shall be assigned to the draft EIS by PR prior to publication.

b. For proposed projects that require a prospectus approved by the Public Works Committees of Congress, the draft EIS shall be submitted to PR prior to the submission of the prospectus to Congress. Two copies of the published statement will accompany the prospectus to Congress.

c. The Regional Administrator shall sign the transmittal letters soliciting comments on the draft EIS to EPA, the heads of Federal agencies, the appropriate U.S. Congressmen and Senators, the Governor of the State which is affected by the proposed action and the Public Works Committees of Congress. The statement shall be sent to the Washington, D.C. offices of members of Congress. On the same day, the appropriate Regional or Assistant Commissioner shall sign transmittal letters distributing copies of the statement to appropriate local officials, Federal, State, and local agencies, special interest groups and the public for review and comments. In addition, the comments of appropriate State, regional or metropolitan clearinghouses in accordance with the procedures prescribed by the Office of Management and Budget Circular A-95, Revised, shall be solicited unless the Governor of the State involved has designated some other point for obtaining the review. Six copies of the printed statement shall be sent to PR for Central Office distribution.

d. The Environmental Protection Agency (EPA), will publish in the FEDERAL REGISTER lists of environmental impact statements received during the preceding week which are available for public comment. The date establishing the 45-day minimum review period and advance availability of a draft EIS will be calculated from the FEDERAL REGISTER publication date of the notice of availability. Draft EIS's shall be made available to the public without charge to the extent practicable or at a fee which is not more than the cost of reproduction. The draft EIS will also be made available for public review in PBS Central Office and Regional Commissioner's office during normal working hours.

e. Regional Commissioners shall maintain a list of groups, known to be interested in PBS activities. In addition, a list shall be maintained of individuals and groups requesting an opportunity to comment on a project or action. A copy of the draft EIS shall be distributed to the individual or groups expressing an interest in the project or action covered by the statement.

f. Notice of availability of the draft EIS shall be published in one or more local newspapers.

g. Federal agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards shall be asked to comment on draft EIS's. These agencies are listed in appendix II of the CEQ Guidelines. Appendix III of the Guidelines lists offices

within Federal and Federal-State agencies that have information regarding the agencies' NEPA activities and receive environmental impact statements on which comments are requested. Draft EIS's shall be submitted for comment to the regional contact points of agencies being consulted when such offices have been established pursuant to section 1500.9(a) of the Guidelines.

h. In implementing the provisions of section 309 of the Clean Air Act, as amended, the responsible official shall submit to the appropriate regional office of EPA for review and comment five copies of all draft EIS's.

12. *Preparation of final environmental impact statements.* The final EIS shall not be prepared until after the site investigation report has been completed. The final EIS must reflect all the site data and substantive comments submitted by other Federal agencies, State, and local officials, individuals and groups. Changes and additions to the text of the draft EIS shall be marked by a vertical line in the margin, unless the final EIS differs substantially from the draft EIS. Where opposing professional views and responsible opinions have been overlooked in the draft EIS and are then brought to agency attention the action should be reviewed and a meaningful reference made in the final EIS to opposing views as well as GSA's position on the issues raised. All substantive comments received on the draft EIS (or summaries thereof when comments have been exceptionally voluminous) shall be attached to the final EIS whether or not the comment is considered to merit individual discussion in the text of the statement. Where appropriate, substantive comments on the draft EIS should be correlated to the text of the final EIS by placing a page or section number in the margin of the comment designating where the proper response may be located.

13. *Submission and distribution of final environmental impact statements.* a. The preliminary final EIS shall be submitted to PR for review and comment. The final EIS shall be reviewed in the same manner as the draft EIS (see subpar. 11a).

b. Copies of the final EIS, with comments attached, shall be sent to all Federal, State, and local agencies and private organizations, clearinghouses, and individuals that made substantive comments on the draft statement and to individuals who requested a copy of the final EIS. Copies of the final EIS shall in all cases be sent to the Environmental Protection Agency to assist it in carrying out its responsibilities under section 309 of the Clean Air Act. Where the number of comments on a draft EIS is such that distribution of the final EIS to all commenting entities appears impracticable, the Assistant Commissioner for Space Management (PR) will notify the Office of General Counsel (L) and consult with EPA concerning alternative arrangements for distribution of the statement. Six copies of the printed final EIS shall be sent to PR for Central Office distribution.

14. *Time requirements for review of draft and final environmental impact statements.* a. No administrative action shall be taken sooner than ninety (90) calendar days following publication of notice of availability of the draft EIS in the FEDERAL REGISTER and the date copies have been made available to EPA, public agencies and interested parties. Further, no administrative action shall be taken sooner than 30 calendar days

after the publication of notice of availability of the final EIS in the FEDERAL REGISTER and the date copies of the final EIS have been made available to EPA, commenting agencies, and the public. The term "action," as used in this subparagraph, shall mean issuance of a notice to proceed pursuant to a construction or demolition contract, acceptance of offers to sell, vesting of title, issuance of notice to relocate within 90 days in accordance with section 301(5) and the terms of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (84 Stat. 1894), and other such activities. Certain procedures are to be excluded from this prohibition (i.e., continuance of design, contracts for appraisal reports, title evidence and surveys, and negotiations for site acquisition). The determination of whether or not another action is an "action" as used in this subparagraph shall be made by the Commissioner of PBS after seeking advice of the Office of General Counsel.

b. A minimum of 45 calendar days shall be provided for comment on the draft EIS. Commenting periods may be extended an additional 15 days at the discretion of the responsible official. Comments not received within allotted commenting period will not receive response in the text of the final EIS.

c. If the final EIS is filed at least 60 calendar days after the notice of availability of the draft EIS is published by EPA in the FEDERAL REGISTER, the 30- and 90-day periods may run concurrently to the extent that they overlap.

d. When emergency circumstances make it necessary to take a major Federal action which may have a significant environmental impact on the human environment without strictly observing the provisions of the CEQ Guidelines and this order concerning minimum periods for agency review, the Assistant Commissioner for Space Management (PR) shall obtain the concurrence of the Commissioner, PBS (P), and consult with EPA concerning alternative arrangements. Similarly, where there are overriding considerations of expense to the Government or impaired program effectiveness, PR will consult with EPA concerning appropriate modifications of the minimum periods when such action is considered appropriate.

15. *Amendment of draft or final environmental impact statement.* Responsible regional PBS officials shall keep abreast of any substantial changes in the proposed action that may develop or significant new information that becomes available concerning its environmental aspects. These circumstances shall be evaluated to determine whether the draft or final EIS should be supplemented or amended. Supplements or amendments to the statement shall be issued, as appropriate. Notice of the development will be given to the Assistant Commissioner for Space Management (PR). The Assistant Commissioner for Space Management (PR) shall consult with EPA regarding possible recirculation of the statement for the appropriate period.

16. *Responsibility for draft and final environmental impact statement preparation in multi-agency actions.* a. Except as provided in subpar. b, below, when GSA and one or more agencies directly sponsor an action, or are directly involved in a group of actions directly related to each other because of functional interdependence and geographical proximity, a "lead agency" shall be designated to assume supervisory responsibility



for preparation of the EIS. Relevant factors in the determination of the appropriate "lead agency" include the time sequence in which the agencies become involved, the magnitude of agency involvement, and agency expertise with respect to the environmental effects of the actions. Where there is a question regarding the primary responsibility for statement preparation, the matter will be referred to the Assistant Commissioner for Space Management (PR), for consultation with EPA for resolution. However, it is possible for a statement to be submitted jointly by all agencies concerned with the comments being returned to a single designated agency official. If GSA is the "lead agency" and one or more agencies have partial responsibility for the action, the other agencies shall be requested to provide to the appropriate responsible PBS official such information as may be necessary to prepare a suitable and complete environmental impact statement. If another agency is designated to be the "lead agency," the criteria for statement preparation for that agency shall apply.

b. The General Services Administration (GSA) will serve as the lead agency in all projects involving construction of buildings by the Public Buildings Service.

17. *Public hearings.* a. Prior to the distribution of a draft EIS for a project, a determination shall be made by the responsible official regarding whether a public hearing should be held. This determination shall be documented and attached to the draft EIS. The following factors shall be considered in determining whether a public hearing is appropriate:

(1) The magnitude of the proposal in terms of economic costs, geographic area involved, and the uniqueness or size of commitment of resources involved;

(2) The degree of interest in the proposal as indicated by requests from the public and Federal, State and local authorities that a hearing be held;

(3) The complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to the agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved with respect to environmental concerns through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on proposed action.

b. The draft EIS shall be made available to the public at least 15 calendar days prior to the hearing.

c. The notice of public hearing shall be issued no later than 5 workdays after distribution of the draft EIS and shall be published in a local newspaper of general circulation at least 15 calendar days prior to the date of the hearing. The notice shall contain but is not necessarily limited to the following:

(1) The date, time, place and purpose of the hearing;

(2) A description of program, the proposed project and project area;

(3) A declaration that any person or organization desiring to comment on the draft EIS will be given an opportunity to be heard;

(4) The location and times where the draft EIS will be available for review by the public; and

(5) The Federal agency or agencies sponsoring the project.

d. Verbatim transcript of the hearing shall be kept.

e. Where necessary a reasonable time limit may be established for each speaker.

f. A public hearing shall be held after publication of the draft for all Bureau of Prisons projects.

g. A public informational meeting can be held at anytime that such a meeting is deemed necessary.

18. *Early notice system.* a. It is necessary to provide timely public notice and understanding of PBS projects and actions that may have an environmental impact and to obtain the views of interested parties. Therefore, Regional Commissioners (PBS), shall establish an early notice system for informing the public of the decision to prepare a draft EIS on proposed master plan, new construction, leasing and repair and alteration projects. A list shall be maintained of all projects or actions for which environmental impact statements will be prepared, and shall be updated weekly and available for public inspection. Regional Commissioners (PBS), shall submit early warning lists to the Assistant Commissioner for Space Management (PR) for compilation and publication in the Federal Register. Regional lists are to be submitted to PR normally by c.o.b. March 5, June 5, September 5, and December 5 of each year. The reports control symbol PB-123 has been assigned to this report. (See the HB, Preparation of environmental impact assessments and statements (PBS P 1095.4), for format instructions.)

b. If it is decided that an EIS is not necessary for a proposed action (1) which normally would require and EIS as identified in subpar. 6a of this attachment, (2) which is similar to actions for which a significant number of statements have been prepared, (3) which has previously been announced as the subject of a statement, or (4) for which a negative declaration has been made in response to a request from CEQ pursuant to section 1500.11(f) of the Guidelines, the Regional Commissioner shall prepare a publicly available record briefly setting forth the decision and reasons for the declaration. The list of such negative declarations and any evaluations made to support the declaration or which conclude that preparation of a statement is not yet timely shall be made available to the public on request in the same manner as provided for lists of statements under preparation. (See subpar. 17a, above.)

19. *Format requirements.* a. Type draft and final environmental impact statements on white paper with clear black type;

b. The statement number will be assigned in Central Office by the Assistant Commissioner for Space Management (PR), in accordance with PBS Information System procedures.

c. Prepare a summary sheet in accordance with the format prescribed in appendix I of the CEQ Guidelines and attach to the environmental impact statements as the second page; and

d. Prepare a cover sheet for each environmental statement.

NOTE: Detailed information on preparing an EIA and EIS and a sample format are found in PBS P 1095.4.

[FR Doc. 78-36302 Filed 12-28-78; 8:45 am]

[4110-88-M]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF RESEARCH FOUNDATION FOR MENTAL HYGIENE, INC.

Research on Mental Health; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)), all persons, who:

1. are employed by Research Foundation for Mental Hygiene, Inc., New York, New York, and Memphis, Tennessee; and

2. have, in the course of their employment, access to information which would identify individuals who are the subjects of the research on mental health which is assisted by the Department of Health, Education, and Welfare grant numbered R01 MH 32841 titled "The Evaluation and Treatment of Sexual Aggressives"; are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

This authorization does not authorize employees of Research Foundation for Mental Hygiene, Inc. to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to the Department of Health, Education, and Welfare grant numbered R01 MH 32841. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered R01 MH 32841 which would identify individuals who are subjects of the research conducted under the grant.

Dated: December 5, 1978.

HERBERT PARDES,  
Director, National Institute of Mental Health.

Dated: December 8, 1978.

KARST BESTEMAN,  
Acting Director, National Institute on Drug Abuse.

Dated: December 14, 1978.

GERALD L. KLIERMAN,  
Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-36230 Filed 12-28-78; 8:45 am]

[4110-86-M]

Center for Disease Control

MINE HEALTH RESEARCH ADVISORY COMMITTEE (FORMERLY COAL MINE HEALTH RESEARCH ADVISORY COMMITTEE)

Rechartering

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, the Center for Disease Control announces the rechartering by the Secretary, HEW, on December 18, 1978, of the Mine Health Research Advisory Committee.

The Federal Mine Safety and Health Amendments Act of 1977 amended the Coal Mine Health and Safety Act of 1969. The new Act established a single law governing worker safety and health in all mining operations, and mandated appointment of an advisory committee on coal or other mine health research. The Coal Mine Health Research Advisory Committee has been renamed, therefore, and the charter has been modified to include all types of mine health research.

Dated: December 20, 1978.

WILLIAM C. WATSON, JR.,  
Director,  
Center for Disease Control.  
[FR Doc. 78-36229 Filed 12-28-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

A. H. ROBINS CO.

Elanone-V (Loperone Hydrochloride) Injection and Tablets Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of new animal drug applications (NADA's) 96-508 and 97-901, which provide for use of Elanone-V in-

jection as a tranquilizer in dogs and cats and Elanone-V tablets as a tranquilizer in dogs. A. H. Robins Co., the sponsor, requested this action.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., Research Laboratories, 1211 Sherwood Ave., Richmond, VA 23220, is the sponsor of NADA 96-508 that covers Elanone-V injection intended for use intravenously (0.10 to 0.40 milligram (mg) per pound of body weight) and intramuscularly (0.20 to 0.80 mg per pound of body weight) in dogs and cats as a tranquilizer. Each milliliter of the product contains 5 mg of loperone hydrochloride. The firm is also the sponsor of NADA 97-901 covering Elanone-V tablets. Each tablet contains 5 mg of loperone hydrochloride. The tablets are administered orally at 0.25 to 1.0 mg per pound of body weight, every 5 to 8 hours. They are indicated for use on dogs as a tranquilizer. Both NADA's were originally approved on August 20, 1975.

By letter of July 27, 1978, the firm stated that it no longer markets these products and requested withdrawal of approval of the NADA's and waived opportunity for hearing. In a separate document published elsewhere in this issue of the FEDERAL REGISTER, the agency is revoking the regulations for these products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-508 and 97-901 and all supplements thereto for Elanone-V injection and Elanone-V tablets is hereby withdrawn, effective (December 29, 1978.)

Dated December 19, 1978.

LESTER M. CRAWFORD,  
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-35910 Filed 12-28-78; 8:45 am]

[4110-03-M]

[NADA 13-436]

MENLO PARK LABORATORIES, INC.

Skin Antiseptic and Cleanser; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for the use of Vet Spray Skin Antiseptic and Cleanser on cats, dogs, cows, and horses as a surgical disinfectant and as an antiseptic cleanser. The sponsor, Menlo Park Laboratories, requested this action.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Menlo Park Laboratories, Inc., Menlo Park Center, P.O. Box 305, Edison, NJ 08817, is the sponsor of NADA 13-436, which provides for use of Vet Spray Skin Antiseptic and Cleanser on cats, dogs, cows, and horses as a surgical disinfectant and as an antiseptic cleanser.

By letter of May 8, 1978, the firm requested that approval of NADA 13-436 be withdrawn because the drug is no longer being marketed, and waived opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is hereby given that approval of NADA 13-436 and all supplements thereto is hereby withdrawn, effective December 29, 1978.

Dated: December 19, 1978.

LESTER M. CRAWFORD,  
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-35911 Filed 12-28-78; 8:45 am]



[4110-08-M]

## Office of the Secretary

## PRIVACY ACT OF 1974

System of Records and Notice of Proposed  
Routine Uses

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new systems of records, Studies of Possible Influences on Cognitive and Emotional Development of Children, HEW/NIH NICHD, 09-25-0138; International Activities: Scientific Visitors at the National Institutes of Health, HEW/NIH/FIC, 09-25-0140.

SUMMARY: The National Institutes of Health (NIH) is hereby publishing the new systems of records in accordance with the requirements of 5 U.S.C. 552a(e)(4). In accordance with the requirements of 5 U.S.C. 552a(e)(11), the routine uses of these proposed systems are set out for public comment. Interested persons are invited to submit written comments with respect to these routine uses.

DATES: The National Institutes of Health will adopt the routine uses as proposed without further notice January 28, 1979, unless comments are received on or before January 28, 1979, which would result in a contrary determination. NIH has filed a report on proposed new systems of records with the Director, Office of Management and Budget, the Speaker of the House, and President of the Senate on Dec. 22, 1978. Because of the requirements in OMB Circular A-108, however, the systems will not be put into effect until sixty (60) days after this filing date.

ADDRESS: Comments should be addressed to Acting Director, Fair Information Practices Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F, Hubert F. Humphrey Building, at the above address.

FOR FURTHER INFORMATION  
CONTACT:

Robert J. Slevin, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, Maryland 20014, or call 301-496-2461.

SUPPLEMENTARY INFORMATION: The National Institute of Child Health and Development (NICHD) proposes to study the possible influences on Cognitive and Emotional Development of Children. In order to carry out the appropriate analyses, NICHD must be able to collate data from a wide variety of sources. The only way to do this is to identify the

## NOTICES

data on each individual with a specific identifier so as to assure absolute correlation of data among the various sources.

NICHD will maintain the records in this system in a secure manner compatible with their content and use. Access will be given only to Department employees whose official duties require access for verification, coding and statistical manipulation and evaluation purposes. NICHD will keep records in locked file cabinets or rooms under the direct control of the Principal Investigator.

The Fogarty International Center (FIC) proposes to report an ongoing program for scientific visitors. The system of records is for administrative purposes only.

FIC has collected approximately fifty (50) data items on each applicant which include, among other items, education, work experience, and references.

Because this is an on-going program, FIC performed a risk analysis on the system of records in accordance with Chapter 45-13 of the HEW General Administration Manual.

NIH did not report the system of records earlier because the great majority of individuals involved are aliens and NIH failed to recognize the U.S. citizens involved.

Dated: December 22, 1978.

FREDERICK M. BOHEN,  
Assistant Secretary for  
Management and Budget.

09-25-0138

## System name:

Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HEW/NIH/NICHD

## Security classification:

None.

## System location:

National Institute of Child Health and Human Development Building 31, Room 2B215, 9000 Rockville Pike, Bethesda, Maryland 20014 and NIH Building 12, 9000 Rockville Pike, Bethesda, Maryland 20014.

## Categories of individuals covered by the system:

Parents and their children who have specifically agreed to participate in studies of the Social and Behavioral Sciences Branch.

## Categories of records in the system:

Psychological tests, observations and parental responses to questionnaires and interviews regarding various aspects of the child's development.

Authority for maintenance of the system:  
42 U.S.C. 241, 289d.

Routine uses of records maintained in the system, including category of users and the purposes of such uses:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Certain infectious diseases are reported to state governments as required by law.

3. To the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (See Appendix B, Department Regulations, [45 CFR, Part 5b], item 100).

4. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his/her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his/her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, assessing, retaining, and disposing of records in the system:

## Storage:

File folders, microfiche, computer tapes and discs.

## Retrievability:

Identifier codes and names. HEW uses to determine: (1) prenatal and paratnatal correlates of later development; (2) possible environmental influences on later development; (3) stability of development; and (4) possible early predictors of later cognitive and emotional difficulties.

## Safeguards:

Data will be kept in secured areas and access limited to authorized personnel (system manager and research staff). Access to computerized data is controlled by the use of identification codes known only to authorized personnel. For computerized records the investigator will comply, where appropriate,

with Department standards and National Bureau of Standards Guidelines. For example, access is controlled by use of security codes known only to authorized personnel.

## Retention and disposal:

One year to five years, depending on the study. Hard copy shredded; computer tapes and discs erased.

## System manager(s) and address:

Chief, Social and Behavioral Sciences Branch, National Institute of Child Health and Human Development, Building 31, Room B2B-15, 9000 Rockville Pike, Bethesda, Maryland 20014.

## Notification procedure:

To determine if a file exists, write to system manager and provide the following information:

a. System name: Studies of Possible Influences in Early Cognitive and Emotional Development carried out by the Social and Behavioral Sciences Branch

b. Complete name at time of study

c. Home address at time the study was undertaken

d. Dates(s) at the time information was provided (if known)

e. Birth date

f. An individual who requests notification of or access to a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6)).

g. There are special procedures for requests on a minor's behalf. These procedures are described in full in Department Regulations (45 CFR, Section 5b.6(c)).

## Record access procedures:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

## Contesting record procedures:

Write to system manager and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Part 5b.7).

## Record source categories:

Information provided by subjects, family, and clinical investigators.

## Systems exempted from certain provisions of the Act:

None.

09-25-0140

## System name:

International Activities: Scientific Visitors at the National Institutes of Health, HEW/NIH/FIC

Security classification (if none, so state):  
None

## System location:

Fogarty International Center, Building 16A, and Division of Computer Research and Technology, Building 12, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Ancillary records are located in laboratories where participants are assigned.

Categories of individuals covered by the system:

Health scientists (mainly foreign but some resident aliens and US citizens) at all levels of their postdoctoral careers who are invited to the National Institutes of Health campus for further training or to conduct research in their biomedical specialties.

## Categories of records in the system:

History of fellowship, employment and/or stay at NIH; education and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

Authority for maintenance of the system:  
42 U.S.C. 2421.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

1. Information is made available to authorized employees and agents of the US, including the General Accounting Office, for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice.

tice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

## Storage:

They are stored in file folders and on file cards, magnetic tape and microfilm.

## Retrievability:

By name and country of citizenship. HEW Use: The program was established to facilitate the exchange of ideas among scientists at all levels of their postdoctoral research careers who spend from one to three years in the laboratories of NIH. Biographical information and references are submitted by the prospective participants for use by the review staffs of NIH and other Public Health Service agencies (Food and Drug Administration and Alcohol, Drug Abuse, and Mental Health Administration) which maintain laboratories on the NIH campus. Invitations are extended by the Directors of the Institutes and other PHS agencies.

## Safeguards (access controls):

Access limited to authorized personnel (system manager and staff). For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) are used, limiting access to authorized personnel.

## Retention and disposal:

Records of successful applicants are retained indefinitely.

System manager(s) and address (Include ZIP Code):

Chief, International Visitors Center, Fogarty International Center, Building 16A, Room 101, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

## Notification Procedure:

Requests for notification of or access to records should be addressed to the system manager as listed above. Verification of identity is required. This procedure is in accordance with Department Regulations 45 CFR Part 5b.5.

## Record access procedures:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5.



Contesting record procedures:

Contact the official under notification procedure above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7.

Record source categories:

Applicants and persons supplying references.

Systems exempted from certain provisions of the act (If none, so state):

None.  
[FR Doc. 78-36325 Filed 12-26-78; 2:16 pm]

[4110-35-M]

HOSPITAL INSURANCE MONTHLY PREMIUM  
Premium Rate for the Uninsured Aged.

Under the authority in Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1979, is \$69.

Section 1818 of the Social Security Act provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, by certain uninsured persons age 65 and older who do not otherwise meet the requirements for entitlement to hospital insurance. (Insured persons need pay no hospital insurance premiums.)

Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during the last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the 12-month period beginning with the following July 1. That section also requires that, for the period beginning July 1, 1979, the premium must be \$33 multiplied by the ratio of (1) the 1979 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of \$1 or, if midway between multiples of \$1, to the next higher multiple of \$1.

Under section 1813(b)(2) of the Act, the 1979 inpatient hospital deductible was determined to be \$160. (See 43 F.R. 44891, September 29, 1978.) The 1973 deductible was actuarially determined to be \$76, although the 1973 deductible was actually promulgated to be only \$72 to comply with a ruling of the Cost of Living Council. (See 37

F.R. 21452, October 11, 1972.) The monthly premium for the 12-month period ending June 30, 1980, has been calculated using the \$76 deductible for 1973, since this appears to satisfy more closely the intent of the law. Thus the monthly hospital insurance premium is  $\$33 \times (160/76) = \$69.47$ , which is rounded to \$69.

Dated: December 21, 1978.  
JOSEPH A. CALIFANO, Jr.,  
Secretary.

[FR Doc. 78-36119 Filed 12-26-78; 8:45 am]

[4110-35-M]

SUPPLEMENTARY MEDICAL INSURANCE FOR THE AGED AND DISABLED (PART B OF MEDICARE)

Monthly Actuarial Rates and Monthly Premium Rate

Each December, the Secretary of Health, Education, and Welfare is required by law to promulgate two notices relating to the Medicare Supplementary Medical Insurance (SMI) program.

One notice announces two amounts which, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI benefits per aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI per disabled enrollee (under age 65) during the 12 months beginning the following July. These amounts are called "monthly adequate actuarial rates."

The second notice is the monthly SMI premium rate to be paid by the aged and disabled enrollees for the 12 months beginning the following July. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) The premium rate must be the lesser of the adequate actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits (effective the preceding June). The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The notices of these announcements for the period July 1, 1979, through June 30, 1980, are as follows:

NOTICE OF MONTHLY ADEQUATE ACTUARIAL RATES

As required by sections 1839(c)(1) and (4) of the Social Security Act (42 U.S.C. 1395r(c)(1) and (4)), as amended, I hereby determine that the monthly adequate actuarial rates applicable for the 12-month period beginning July 1, 1979, are \$13.40 for enrollees age 65 and over, and \$25.00 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

NOTICE OF MONTHLY PREMIUM RATE

Under the authority granted by law, I have determined and hereby announce that the basic premium amount required by section 1839(c)(3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), as amended, will be \$8.70 monthly during the period beginning July 1, 1979, and ending June 30, 1980.

STATEMENT OF ACTUARIAL ASSUMPTIONS AND BASES EMPLOYED IN DETERMINING THE MONTHLY ADEQUATE ACTUARIAL RATES AND THE STANDARD MONTHLY PREMIUM RATE FOR THE SUPPLEMENTARY MEDICAL INSURANCE PROGRAM BEGINNING JULY 1979

1. ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

The law requires that the Supplementary Medical Insurance (SMI) program be financed on an incurred basis. That is, program income during the 12-month period for which the adequate actuarial rates are effective must be sufficient to pay for services rendered during that period (plus the Government's related administrative costs) even though payment for some of these services will not be made until after the close of the period. The portion of income required to cover benefits not paid until after the close of the 12-month period is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the adequate rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level which is adequate to cover the impact of a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of June 30 for each of the years 1977-79.

TABLE I--ACTUARIAL STATUS OF THE SMI TRUST FUND  
YEARS ENDING JUNE 30 OF 1977-79  
(In Millions)

| Year ending<br>June 30 | Assets  | Liabilities | Assets less<br>liabilities |
|------------------------|---------|-------------|----------------------------|
| 1977                   | \$2,258 | \$1,763     | \$ 495                     |
| 1978                   | 3,824   | 2,237       | 1,587                      |
| 1979                   | 4,782   | 2,565       | 2,217                      |

2. MONTHLY ADEQUATE ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OLDER

The monthly adequate actuarial rate is one-half the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for the following: interest earnings on assets in the trust fund; contingency margin; and amortization of unfunded liabilities.

The monthly adequate actuarial rate for enrollees age 65 and older for the

year ending June 30, 1980, was determined by projecting per enrollee cost for the 12-month period ending June 30, 1977, by type of service. The projected costs for the years ending June 30 of 1977-80 are shown in Table 2. The values for the 12-month period ending June 30, 1977, were established from program data. Subsequent years were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 3.



TABLE 2--DERIVATION OF PROMULGATED MONTHLY RATE FOR ENROLLEES AGE 65  
AND OVER YEARS ENDING JUNE 30 OF 1977-80

|                                                                      | 1977         | 1978         | 1979         | 1980         |
|----------------------------------------------------------------------|--------------|--------------|--------------|--------------|
| <b>Covered services (at level recognized):</b>                       |              |              |              |              |
| Physicians' reasonable charges                                       | \$9.99       | \$11.37      | \$12.65      | \$13.99      |
| Radiology and pathology                                              | .51          | .59          | .67          | .78          |
| Outpatient hospital and other institutions                           | 1.72         | 1.95         | 2.28         | 2.64         |
| Home health agencies                                                 | .31          | .35          | .40          | .47          |
| Group practice plans                                                 | .24          | .30          | .34          | .39          |
| Independent lab                                                      | .14          | .17          | .19          | .22          |
| <b>Total services</b>                                                | <b>12.91</b> | <b>14.73</b> | <b>16.53</b> | <b>18.49</b> |
| <b>Cost sharing:</b>                                                 |              |              |              |              |
| Deductible                                                           | -1.73        | -1.76        | -1.78        | -1.80        |
| Coinurance                                                           | -2.08        | -2.41        | -2.73        | -3.08        |
| <b>Total benefits</b>                                                | <b>9.10</b>  | <b>10.56</b> | <b>12.02</b> | <b>13.61</b> |
| <b>Administrative expenses</b>                                       | <b>.79</b>   | <b>.76</b>   | <b>.94</b>   | <b>1.02</b>  |
| <b>Incurred expenditures</b>                                         | <b>9.89</b>  | <b>11.32</b> | <b>12.96</b> | <b>14.63</b> |
| <b>Value of interest on fund</b>                                     | <b>-.09</b>  | <b>-.20</b>  | <b>-.27</b>  | <b>-.29</b>  |
| <b>Margin for contingencies and to amortize unfunded liabilities</b> | <b>.90</b>   | <b>1.18</b>  | <b>.71</b>   | <b>-.94</b>  |
| <b>Promulgated monthly rate</b>                                      | <b>10.70</b> | <b>12.30</b> | <b>13.40</b> | <b>13.40</b> |

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for the year ending June 30, 1980, is \$14.63. The monthly adequate actuarial rate of \$13.40 provides an adjustment for interest earnings and a small margin for contingencies.

### 3. MONTHLY ADEQUATE ACTUARIAL RATE FOR DISABLED ENROLLEES

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 consecutive months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projections for the aged, using the same actuarial assumptions. Costs for the end-stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for the year ending June 30, 1980, is \$26.47. The monthly adequate actuarial rate of \$25.00 provides an adjustment for interest earnings and a small margin for contingencies.



[4110-35-C]

TABLE 4--DERIVATION OF PROMULGATED MONTHLY RATE FOR DISABLED ENROLLEES YEARS ENDING JUNE 30 OF 1977-80

|                                                               | 1977    | 1978    | 1979    | 1980    |
|---------------------------------------------------------------|---------|---------|---------|---------|
| Covered services (at level recognized):                       |         |         |         |         |
| Physicians' reasonable charges                                | \$11.16 | \$12.78 | \$14.28 | \$15.80 |
| Radiology and pathology                                       | .53     | .61     | .70     | .81     |
| Outpatient hospital and other institutions                    | 9.73    | 11.38   | 13.18   | 14.75   |
| Home health agencies                                          | .22     | .25     | .29     | .33     |
| Group practice plans                                          | .17     | .21     | .24     | .28     |
| Independent lab                                               | .11     | .12     | .14     | .16     |
| Total services                                                | 21.92   | 25.35   | 28.83   | 32.13   |
| Cost sharing:                                                 |         |         |         |         |
| Deductible                                                    | -1.59   | -1.62   | -1.64   | -1.65   |
| Coinsurance                                                   | -3.92   | -4.58   | -5.23   | -5.85   |
| Total benefits                                                | 16.41   | 19.15   | 21.96   | 24.63   |
| Administrative expenses                                       |         |         |         |         |
|                                                               | 1.41    | 1.38    | 1.73    | 1.84    |
| Incurred expenditures                                         | 17.82   | 20.53   | 23.69   | 26.47   |
| Value of interest on fund <sup>1</sup>                        | -1.61   | -1.96   | -2.11   | -2.21   |
| Margin for contingencies and to amortize unfunded liabilities | 2.79    | 6.43    | 3.42    | .74     |
| Promulgated monthly rate                                      | 19.00   | 25.00   | 25.00   | 25.00   |

<sup>1</sup>/The values for 1977, 1978, and 1979 differ substantially from last year's promulgation notice due to refinements in the methodology for determining interest for disabled enrollees.

## 4. SENSITIVITY TESTING

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy under alternate assumption of the rates promulgated here. The most unpredictable factors which contribute significantly to future costs are outpatient hospital costs, physician utilization (measured indirectly and reflecting the use of more visits per enrollee, the use of more expensive services, and other factors not explained by simple

price per service increases), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. All assumptions not shown in Table 5 are the same as in Table 3.

Table 5 indicates that, under the assumptions used in preparing this report, the promulgated monthly rates will result in an excess of assets over liabilities of \$1,737 million by the end of June 1980. This amounts to 14.7

percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic produce an excess of assets over liabilities of \$206 million by the end of June 1980, which amounts to 1.5 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the promulgated monthly rates will result in an excess of assets over liabilities of \$2,777 million, which amounts to 26.1 percent of the estimated total incurred expenditures for the following year.

TABLE 5--PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS YEARS ENDING JUNE 30 OF 1979-80

|                                                                            | This projection |         | Low assumption |         | High assumption |         |
|----------------------------------------------------------------------------|-----------------|---------|----------------|---------|-----------------|---------|
|                                                                            | 1979            | 1980    | 1979           | 1980    | 1979            | 1980    |
| Projection factors (in percent):                                           |                 |         |                |         |                 |         |
| Physicians' fees <sup>1</sup>                                              | 7.9             | 7.5     | 6.9            | 6.5     | 9.4             | 9.0     |
| Utilization of physicians' services <sup>2</sup>                           | 3.0             | 3.0     | 1.0            | 1.0     | 5.5             | 5.5     |
| Outpatient hospital services per enrollee <sup>3</sup>                     | 15.0            | 15.0    | 5.0            | 5.0     | 30.0            | 30.0    |
| Home health agency services per enrollee <sup>3</sup>                      | 15.0            | 15.0    | 5.0            | 5.0     | 30.0            | 30.0    |
| Actuarial status (in millions):                                            |                 |         |                |         |                 |         |
| Assets                                                                     | \$4,782         | \$4,655 | \$5,022        | \$5,521 | \$4,444         | \$3,386 |
| Liabilities                                                                | 2,565           | 2,918   | 2,491          | 2,744   | 2,671           | 3,180   |
| Assets less liabilities                                                    | 2,217           | 1,737   | 2,531          | 2,777   | 1,773           | 206     |
| Ratio of assets less liabilities to expenditures (in percent) <sup>4</sup> | 21.6            | 14.7    | 26.4           | 26.1    | 15.7            | 1.5     |

<sup>1</sup>/As recognized for payment under the program.

<sup>2</sup>/Increase in the number of services received per enrollee and greater relative use of more expensive services.

<sup>3</sup>/The values for 1979 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.

<sup>4</sup>/Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.



## 5. STANDARD PREMIUM RATE

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

1. The adequate actuarial rate for enrollees age 65 and older; or
2. The current standard monthly premium, increased by the same percentage that the level of old-age survivors, and disability insurance (OASDI) benefits has been increased since the May preceding the promulgation (and rounded to the nearer dime).

The standard monthly premium rate for the 12-month period ending with June 30, 1979, is \$8.20. The OASDI benefit table was increased 6.5 percent in June 1978. The \$8.20 rate, increased by 6.5 percent and rounded to the nearer ten cent multiple, is \$8.70. Since this is less than the adequate actuarial rate, the standard premium rate is \$8.70 for the 12 months ending with June 1980.

Dated: December 21, 1978.

JOSEPH A. CALIFANO, JR.,  
Secretary.

[FR Doc. 78-36120 Filed 12-28-78; 8:45 am]

## [4110-12-M]

Office of the Secretary

## PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

## Meeting

The President's Committee on Mental Retardation was established by Executive Order to provide advice and assistance in the area of mental retardation to the President including evaluation of the adequacy of the national effort to combat mental retardation; coordination of activities of Federal agencies; provision of adequate liaison between foundations and other private organizations; and development of information designed for dissemination to the general public.

The Committee will meet on Wednesday, January 17, 1979, 1:30 p.m. to 5:00 p.m., at the Disabled American Veterans Building, First Floor Conference Room, 807 Main Avenue, S.W., Washington, D.C.; Thursday, January 18, 1979, 9:00 a.m. to 5:00 p.m., Conference Room 425A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.; and on Friday, January 19, 1979, Conference Room 800 of the Hubert H. Humphrey Building. At the meeting the Committee will discuss full citizenship rights, humane service systems, trends in residential facilities, public awareness, and prevention of mental retardation.

These meetings are open to the public. A translator for the Deaf will be available upon advanced request.

Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, Room 2614, ROB No. 3, 7th and D Streets, S.W., Washington, D.C. 20201, telephone: (202) 245-7634.

Dated: December 15, 1978.

FRED J. KRAUSE,  
Executive Director, President's  
Committee on Mental Retardation.

[FR Doc. 78-36359 Filed 12-28-78; 8:45 am]

## [4110-07-M]

## TABLE OF AVERAGE TOTAL WAGES YEAR BY YEAR

Average Total Wages for the Years 1951-1977  
for Adjusting Actual Earnings for Use in  
Computing Social Security Benefits

I hereby determine and announce the average of total wages for each calendar year 1951 through 1977 which will be used for computing social security benefits under sections 215(a) and (b) of the Social Security Act (42 U.S.C. 415(a) and (b)). The average of the total wages for each of those years is as follows:

| Calendar year and average of the total wages |            |
|----------------------------------------------|------------|
| 1951.....                                    | \$2,799.16 |
| 1952.....                                    | 2,973.32   |
| 1953.....                                    | 3,139.44   |
| 1954.....                                    | 3,155.64   |
| 1955.....                                    | 3,301.44   |
| 1956.....                                    | 3,532.36   |
| 1957.....                                    | 3,641.72   |
| 1958.....                                    | 3,673.60   |
| 1959.....                                    | 3,855.80   |
| 1960.....                                    | 4,007.12   |
| 1961.....                                    | 4,086.76   |
| 1962.....                                    | 4,291.40   |
| 1963.....                                    | 4,396.64   |
| 1964.....                                    | 4,576.32   |
| 1965.....                                    | 4,658.72   |
| 1966.....                                    | 4,938.36   |
| 1967.....                                    | 5,213.44   |
| 1968.....                                    | 5,571.76   |
| 1969.....                                    | 5,893.76   |
| 1970.....                                    | 6,186.24   |
| 1971.....                                    | 6,497.08   |
| 1972.....                                    | 7,133.80   |
| 1973.....                                    | 7,580.16   |
| 1974.....                                    | 8,030.76   |
| 1975.....                                    | 8,630.92   |
| 1976.....                                    | 9,226.48   |
| 1977.....                                    | 9,779.44   |

We are publishing these average wages as required by section 215(a)(1)(D) of the Social Security Act as amended by the Social Security Amendments of 1977 (Pub. L. 95-216, enacted December 20, 1977).

## BACKGROUND AND PURPOSE

The Social Security Amendments of 1977 provided a new way to compute social security benefits. We are pub-

lishing a detailed explanation of the new computation method and the reasons for the change in an interim regulation amending Subpart C of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations that appears elsewhere in this issue of the FEDERAL REGISTER.

Briefly, the changes involve the way benefit amounts are computed for workers who reach age 62 after 1978. The new method is intended to stabilize the relationship between benefit levels and earnings before retirement for persons who become eligible for benefits in the future. Under the benefit computation methods in the law before the 1977 amendments, the relationship between future benefit levels and preretirement earnings was unpredictable, depending on future increases in the cost of living and in average wage levels. Based on reasonable assumptions regarding future increases in the cost of living and in average wage levels, benefit levels were projected to increase faster than wage levels under the provisions in the old law. Thus, the new computation method provided in the 1977 amendments substantially improves the long-range financial condition of the Social Security Trust Funds.

The new computation methods include a new way of compensating for inflation's effects on earnings levels that occurred before a person becomes entitled to benefits. The compensation is to adjust or "index" the worker's past earnings in proportion to the changes in the country's average wage levels that have occurred during his working years. To make this adjustment, it was necessary to determine the average wages of all workers ("average of the total wages") in each calendar year from 1951 on. (The new computation method counts only those years. Under the amendments we still use an older method that also counts earnings in earlier years if that gives higher benefits, but none of the earnings will be indexed.) Section 215(a)(1)(D), as amended, directed us to do so and to publish those figures; those are the "average of the total wages" figures listed above.

## HOW WE FIGURED THE AVERAGE TOTAL WAGES

The interim regulation mentioned above explains how we determined the average total wages. Briefly, for years after 1977, they are the total wages earned in each year, divided by the total number of individuals who earned them. These totals will be obtained from data on W-2 forms submitted to the Internal Revenue Service for income tax purposes. Any individual who works for wages in more than one job is counted as only one worker.

For years before 1978, we determined average wages from data on wages earned during the first quarter of the year and reported to SSA for social security tax purposes. We multiplied the average wage for the first quarter by four to obtain the average wage for the year. We did this rather than use the total wages reported for the year because many wage earners reach the ceiling for reported taxable earnings before the end of the year, while relatively few reach it in the first quarter.

For 1973-1977, we determined average wages from data collected on all taxable wages reported to SSA for the first quarter of the year. For years prior to 1973, we used a statistical sample of such data, because data on average taxable wages reported for all employees are not available on a 100-percent basis before 1973. For 1951-1956, the size of the sample was 0.1 percent. For 1957-1972, the sample was 1 percent.

Section 215(a)(1)(D) of the Act requires the publication of the average total wages determined for years 1951-1978 by November 1, 1979. We are publishing the figures for 1951-1977 now because they will be used to compute benefits for a large number of beneficiaries as of January 1979 and because many corporations base benefits payable under their pension programs on benefits payable under social security. These figures are based on the definition of average total wages proposed in the interim regulation referred to earlier.

## FOR FURTHER INFORMATION CONTACT:

Mr. Harry C. Ballantyne, Acting Deputy Chief Actuary, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2466.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; and 13.805, Social Security—Survivors Insurance.)

Dated: December 16, 1978.

JOSEPH A. CALIFANO, JR.,  
Secretary of Health,  
Education, and Welfare.

[FR Doc. 78-36345 Filed 12-28-78; 8:45 am]

## [4210-01-M]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-78-906]

## URBAN DEVELOPMENT ACTION GRANTS

Revised Minimum Standards for Physical and Economic Distress for Metropolitan Cities and Urban Counties

AGENCY: Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: The Department is providing Notice of the most current minimum standards of physical and economic distress for metropolitan cities, other cities over 50,000 population, and urban counties for the Urban Development Action Grant program. This Notice is required by 24 CFR 570.452(b)(1)(i). We are also providing a listing of those metropolitan cities, other cities over 50,000 population and urban counties which meet the standards of minimum physical and economic distress, following the change in data from the 1976 to the 1977 average yearly rate of unemployment compiled by the Bureau of Labor Statistics.

FOR FURTHER INFORMATION CONTACT:

Sarah Underwood, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202/755-6540.

SUPPLEMENTARY INFORMATION: On October 30, 1978 (43 FR 50668), the Department published interim regulations deleting specific reference to the minimum standards of physical and economic distress for fiscal year 1978. Section 570.452 was amended to require that HUD issue in notice form the minimum threshold for each category of distress from time to time. This notice accommodates that requirement.

Furthermore, the standard for average yearly unemployment has been changed from 7.69 percent or greater to 6.98 or greater. This is a result of a recent national update of average yearly unemployment for 1977 compiled by the Bureau of Labor Statistics. A list of metropolitan cities, other cities over 50,000, and urban counties which meet the minimum standards of distress is provided.

The following notice is published pursuant to Section 570.452(b)(1)(i) (43 FR 50668):

I. The most current minimum standards of physical and economic distress are:

(A) *Age of housing.* 34.15 percent of the applicant's year-round housing units were constructed prior to 1940, based on U.S. Census data;

(B) *Per capita income.* The net increase in per capita income for the period 1969-1974 was \$1,424 or less, based on U.S. Census data;

(C) *Population lag/decline.* For the period 1960-1975 the percentage rate of population growth (based on corporate boundaries in 1960 and corporate boundaries in 1975) was 15.52 or less, based on U.S. Census data;

(D) *Unemployment.* The average yearly rate of unemployment for 1977 was 6.98 percent or greater, based on August, 1978 data compiled by the Bureau of Labor Statistics;

(E) *Job lag/decline.* The rate of growth in retail and manufacturing employment for the period 1967-1972 was 7.08 percent or less, based on U.S. Census data. If data is not available for both retail and manufacturing employment, the threshold will be the median (based on those cities for which both sets of data are available) for either retail employment or manufacturing employment;

(F) *Poverty* 11.24 percent or more of persons within the applicant's jurisdiction are at or below the poverty level, based on 1970 U.S. Census data;

II. The following cities have met the current minimum standards of physical and economic distress:

| ALABAMA           |                |
|-------------------|----------------|
| Anniston          | Mobile         |
| Birmingham        | Montgomery     |
| Florence*         | Tuscaloosa     |
| Gadsden           |                |
| ARKANSAS          |                |
| North Little Rock | Texarkana      |
| Pine Bluff        |                |
| CALIFORNIA        |                |
| Alhambra          | Ontario        |
| Bakersfield       | Pasadena       |
| Berkeley          | Pico Rivera    |
| Burbank           | Pomona         |
| Chula Vista       | Richmond       |
| Compton           | Riverside      |
| El Monte          | Sacramento     |
| Fresno            | San Bernardino |
| Glendale          | San Francisco  |
| Inglewood         | Santa Barbara  |
| Lompoc            | Santa Cruz     |
| Long Beach        | Santa Monica   |
| Los Angeles       | Seaside        |
| Norwalk           | South Gate     |
| Oakland           | Stockton       |
| COLORADO          |                |
| Denver            | Pueblo         |
| CONNECTICUT       |                |
| Bridgeport        | New London     |
| Hartford          | Norwalk        |
| Meriden           | Norwich        |
| New Britain       | Waterbury      |
| New Haven         | West Haven     |



| DELAWARE             |                 | MICHIGAN      |                  | PENNSYLVANIA   |                  |
|----------------------|-----------------|---------------|------------------|----------------|------------------|
| Wilmington           |                 | Battle Creek  | Jackson          | Allentown      | Lancaster        |
|                      |                 | Bay City      | Kalamazoo        | Altoona        | Philadelphia     |
|                      |                 | Dearborn      | Lansing          | Bethlehem      | Pittsburg        |
|                      |                 | Detroit       | Muskegon         | Chester        | Reading          |
|                      |                 | East Lansing  | Muskegon Heights | Easton         | Scranton         |
|                      |                 | Flint         | Pontiac          | Erie           | Upper Darby      |
|                      |                 | Grand Rapids  | Saginaw          | Harrisburg     | Wilkes-Barre     |
|                      |                 |               |                  | Hazleton       | Williamsport     |
|                      |                 |               |                  | Johnstown      | York             |
| DISTRICT OF COLUMBIA |                 | MINNESOTA     |                  | RHODE ISLAND   |                  |
| Washington           |                 | Duluth        | St. Cloud        | Pawtucket      | Providence       |
|                      |                 | Minneapolis   | St. Paul         |                |                  |
| FLORIDA              |                 | MISSISSIPPI   |                  | SOUTH CAROLINA |                  |
| Bradenton            | Miami Beach     |               | Jackson*         | Charleston     | North Charleston |
| Cocoa                | Panama City     |               | Moss Point*      | Columbia       | Spartanburg      |
| Daytona Beach        | Pensacola       |               |                  | Greenville     |                  |
| Fort Myers           | Tampa           |               |                  |                |                  |
| Melbourne            | West Palm Beach |               |                  |                |                  |
| Miami*               |                 |               |                  |                |                  |
| GEORGIA              |                 | MISSOURI      |                  | SOUTH DAKOTA   |                  |
| Albany*              | Macon           |               | St. Louis        |                |                  |
| Atlanta              | Savannah        |               | Springfield      |                |                  |
| Augusta              |                 |               |                  |                |                  |
| ILLINOIS             |                 | MONTANA       |                  | TENNESSEE      |                  |
| Champaign            | Moline          |               |                  |                | Johnson City     |
| Chicago              | Peoria          |               |                  |                | Knoxville        |
| Cicero               | Rantoul         |               |                  |                |                  |
| Decatur              | Rockford        |               |                  |                |                  |
| East St. Louis       | Rock Island     |               |                  |                |                  |
| Joliet               | Urbana          |               |                  |                |                  |
| Kankakee             |                 |               |                  |                |                  |
| INDIANA              |                 | NEW HAMPSHIRE |                  | TEXAS          |                  |
| Anderson             | Kokomo          |               | Nashua           |                | Abilene          |
| Bloomington          | Lafayette       |               |                  |                | Beaumont*        |
| East Chicago         | Muncie          |               |                  |                | Brownsville      |
| Evansville           | South Bend      |               |                  |                | Bryan*           |
| Fort Wayne           | Terre Haute     |               |                  |                | Corpus Christi*  |
| Gary                 | West Lafayette  |               |                  |                | Denison          |
| Hammond              |                 |               |                  |                | Edinburg         |
| IOWA                 |                 |               |                  |                | El Paso          |
| Council Bluffs       | Sioux City      |               |                  |                | Fort Worth       |
| Davenport            | Waterloo        |               |                  |                | Galveston        |
| KANSAS               |                 |               |                  |                | Harlingen        |
| Kansas City          | Wichita         |               |                  |                | Killeen          |
| Lawrence             |                 |               |                  |                | Laredo           |
| KENTUCKY             |                 |               |                  |                |                  |
| Ashland              | Louisville      |               |                  |                |                  |
| Covington            | Owensboro       |               |                  |                |                  |
| Hopkinsville         |                 |               |                  |                |                  |
| LOUISIANA            |                 |               |                  |                |                  |
| Alexandria           | Monroe*         |               |                  |                |                  |
| Lafayette*           | New Orleans     |               |                  |                |                  |
| Lake Charles         | Shreveport      |               |                  |                |                  |
| MAINE                |                 |               |                  |                |                  |
| Auburn               | Portland        |               |                  |                |                  |
| Lewiston             |                 |               |                  |                |                  |
| MARYLAND             |                 |               |                  |                |                  |
| Baltimore            |                 |               |                  |                |                  |
| MASSACHUSETTS        |                 |               |                  |                |                  |
| Boston               | Lowell          |               |                  |                |                  |
| Brockton             | Lynn            |               |                  |                |                  |
| Brookline            | Malden          |               |                  |                |                  |
| Cambridge            | Medford         |               |                  |                |                  |
| Chicopee             | New Bedford     |               |                  |                |                  |
| Fall River           | Pittsfield      |               |                  |                |                  |
| Fitchburg            | Quincy          |               |                  |                |                  |
| Haverhill            | Somerville      |               |                  |                |                  |
| Holyoke              | Springfield     |               |                  |                |                  |
| Lawrence             | Waltham         |               |                  |                |                  |
| Leominster           | Worcester       |               |                  |                |                  |

Fresno, California\*  
Kern, California  
Riverside, California  
Polk, Florida  
Madison, Illinois  
Hudson, New Jersey  
Beaver, Pennsylvania  
Luzerne, Pennsylvania  
Washington, Pennsylvania  
Westmoreland, Pennsylvania  
York, Pennsylvania  
\*Requires a unique distress factor to qualify on the basis of minimum physical and economic distress.

Issued at Washington, D.C., December 26, 1978.

ROBERT C. EMBRY, Jr.,  
Assistant Secretary for Community  
Planning and Development.  
(FR Doc. 78-36346 Filed 12-28-78; 8:45 am)

#### [4310-84-M] DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

[CA 5461]

##### CALIFORNIA

##### Application

DECEMBER 13, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Beacon Oil Company of Hanford, California has filed a right-of-way application, CA 5461, for an existing 6" pipeline for the purpose of transporting crude oil across the following described lands:

##### MOUNT DIABLO MERIDIAN

T. 20 S., R. 15 E.,  
Sec. 2, SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the undersigned at E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,  
Chief, Lands Section, Branch of  
Lands and Minerals Operations.  
(FR Doc. 78-36231 Filed 12-28-78; 8:45 am)

[4310-84-M]

[NM 35505, 35506]

##### NEW MEXICO

##### Applications

DECEMBER 19, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 8 W.,  
Sec. 34, W $\frac{1}{2}$ SW $\frac{1}{4}$ .  
T. 25 N., R. 11 W.,  
Sec. 22, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

These pipelines will convey natural gas across 0.226 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

(FR Doc. 78-36257 Filed 12-28-78; 8:45 am)

[4310-84-M]

[Wyoming 65823]

##### WYOMING

##### Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

##### SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 20 N., R. 93 W.,  
Sec. 26, S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 36, S $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
and S $\frac{1}{2}$ SE $\frac{1}{4}$ .

The pipeline with related facilities will transport natural gas produced from the Federal #1-26 gas well, located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of sec. 26, to a point of connection with Colorado In-

terstate Gas Company's existing pipeline located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  sec. 36, T. 20 N., R. 93 W., 6th P.M., in Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.  
(FR Doc. 78-36260 Filed 12-28-78; 8:45 am)

[4310-84-M]

[Wyoming 65915]

##### WYOMING

##### Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct a 4½ inch pipeline and related anode facilities for the purpose of transporting natural gas across the following described public lands:

##### SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 94 W.,  
Sec. 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ .

The pipeline with appurtenant anode facilities will transport natural gas produced from the Siberia Ridge 7-A Well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of sec. 5, to a point of connection with Cities Service Gas Company's existing pipeline in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of sec. 4, in T. 21 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management,



1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-36261 Filed 12-20-78; 8:45 am]

#### [4310-84-M]

(Buffalo 041392 Amendment)

#### WYOMING

##### Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Marathon Pipe Line Company of Casper, Wyoming filed an application to amend their existing right-of-way B-041392 to install a rectifier, deep-well ground bed and related facilities for the maintenance of their existing 6 inch pipeline across the following described lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING  
T. 51 N., R. 93 W.,  
Sec. 24, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

These facilities are required for the operation and maintenance of Marathon Pipe Line Company's existing 6 inch pipeline in T. 51 N., R. 93 W., in Big Horn County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-36262 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

(Wyoming 65826)

#### WYOMING

##### Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4 $\frac{1}{2}$  inch O.D. pipeline for the purpose of transporting natural gas

across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING  
T. 20 N., R. 112 W.,  
Sec. 34, N $\frac{1}{2}$ S $\frac{1}{2}$ .

The pipeline will transport natural gas produced from the Fabian Ditch #134 Well located in the N $\frac{1}{2}$ SW $\frac{1}{4}$  of sec. 34, T. 20 N., R. 112 W., Lincoln County to a point of connection with Northwest Pipeline Corporation's existing pipeline in sec. 35, T. 20 N., R. 112 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P. O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-36263 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

(Wyoming 65824)

#### WYOMING

DECEMBER 19, 1978.

##### Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4 $\frac{1}{2}$  inch O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING  
T. 19 N., R. 92 W.,  
Sec. 6, lots 6 and 7.

The pipeline with related facilities will transport natural gas produced from the Fair Federal No. 1-6 Well located in lot 7 of sec. 6, T. 19 N., R. 92 W., to a point of connection with Colorado Interstate Gas Company's existing pipeline in sec. 1, T. 19 N., R. 93 W., all within Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 36234 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

(Wyoming 65827)

#### WYOMING

##### Application

DECEMBER 18, 1978

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4 $\frac{1}{2}$  inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING  
T. 12 N., R. 119 W.,  
Sec. 14, E $\frac{1}{2}$ SE $\frac{1}{4}$ .

The pipeline will transport natural gas produced from the UPRR No. 1 Well located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of sec. 13 to a point of connection with Mountain Fuel's existing pipeline in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of sec. 11, T. 12 N., R. 119 W., in Uinta County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-36235 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

##### BUTTE DISTRICT GRAZING ADVISORY BOARD

##### Meeting

Notice is hereby given, in accordance with Pub. L. 94-579, that a meeting of the Butte District Grazing Advisory Board will be held on Thursday, February 8, 1979.

The meeting will begin at 9 a.m. in the meeting room of the Capri Motel, 220 North Wyoming Street, Butte, Montana.

The agenda for the meeting will include:

- (1) A discussion of the function and constraints of grazing advisory boards;
- (2) Election of officers;
- (3) A review of the District's allotment management plans (AMP's) as they relate to the expenditure of range betterment funds;
- (4) A review of current progress on the District's range environmental statements;
- (5) Public comments;
- (6) Arrangements for the next meeting.

This is the first meeting of the board, which shall serve to offer advice and make recommendations regarding commercial livestock grazing in the development of allotment management plans and the utilization of range betterment funds within the Butte District.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 308, Butte, Montana 59701 by February 6, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: December 19, 1978.

GERALD L. QUINN,  
Acting District Manager.

[FR Doc. 78-36233 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

##### ROCK SPRINGS DISTRICT GRAZING ADVISORY BOARD

##### Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Rock Springs District Grazing Advisory Board will be held on February 1, 1979.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management office on Highway 187 North, Rock Springs, Wyoming.

The agenda for the meeting will include:

- (1) Review and discussion of Allotment Management Plans (AMP's) for the Sandy Grazing Environmental Statement Area

(2) A reading of written statements and public comment period.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, Highway 187 North, P. O. Box 1869, Rock Springs, Wyoming 82901 by January 29, 1979.

Depending on the number of persons wishing to make oral statement, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

JERRY K. OSTROM,  
Assistant District Manager,  
Rock Springs District.

[FR Doc. 78-36264 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

##### UTAH; GRAZING MANAGEMENT

##### Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Vernal District Grazing Advisory Board will be held on February 9, 1979.

The meeting will begin at 10:30 a.m. in the conference room of the Bureau of Land Management office, 170 South 5th East, Vernal, Utah.

The agenda for the meeting will include:

- (1) Organization of the Board
- (2) A discussion of duties and functions of the Board
- (3) The expenditure of range betterment funds for range improvements
- (4) A discussion of the relationships of the Vernal Taylor Grazing Committee with the Board
- (5) A review of current policy and programs relating to allotment management plans including the on-going and future grazing environmental statement effort
- (6) Discussion of the Board's future involvement with the allotment management program
- (7) A discussion of the Public Rangelands Improvement Act of 1978
- (8) The arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management,

ment; P.O. Box F; Vernal, Utah, by February 2, 1979. Depending on the number of persons wishing to make oral statements, the District Manager may establish a per person time limit. Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Date Signed: December 20, 1978.

LLOYD H. FERGUSON,  
District Manager.

[FR Doc. 78-36258 Filed 12-28-78; 8:45 am]

#### [4310-84-M]

##### IDAHO WILDERNESS INVENTORY

##### Proposed Decision

Notice is hereby given that the Bureau of Land Management has completed the first phase of wilderness inventories on certain public lands in Idaho. The inventories, following guidelines established by the Bureau, were conducted in advance of the statewide inventory in order to meet time commitments previously established for two proposed pipeline projects, the Northern Tier Pipeline and the Western Leg of the Alaska Natural Gas Transportation System, both crossing Idaho through the Coeur d'Alene District.

The proposed initial decision is that lands in Idaho crossed by the pipeline projects, with the exception of two RARE II areas previously identified by the U. S. Forest Service, clearly and obviously do not meet the criteria for identification as Wilderness Study Areas. The basis for this decision is that the lands do not meet the wilderness size requirements, as stated in the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Public comments on this proposed decision are being sought during a 60-day public review period beginning on December 20, 1978. An informal open house will be held January 10 and 11 at the BLM Coeur d'Alene District Office to provide an opportunity for public discussion and review of the proposed decision. Interested persons may contact the District by telephone if they wish to visit after regular working hours. The comment period will conclude on February 19, 1979.

To Submit comments or obtain additional information, contact:

William L. Mathews, State Director, Idaho State Office—BLM, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724, Telephone: 208-384-1401.

Martin J. Zimmer, District Manager, Coeur d'Alene District Office—BLM, P. O. Box 1889, Coeur d'Alene, Idaho 83814, Telephone: 208-667-2561.



Dated: December 19, 1978.

T. G. BINGHAM  
Acting Idaho State Director,  
Bureau of Land Management.

[FR Doc. 78-36232 Filed 12-28-78; 8:45 am]

[4310-84-M]

# UTAH

## Wilderness Aspects; Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public comment period.

SUMMARY: Notice is hereby given that the public comment period deadline has been extended from December 18, 1978, as published August 23, 1978 (43FR37494) to February 16, 1979. This extension will allow the public more time to comment on the wilderness aspects of roadless areas of 5,000 acres or more that would be crossed by proposed electrical transmission, railroad and pipeline routes for the proposed Intermountain Power Project.

Date Signed: December 22, 1978.

WILLIAM G. LEAVELL,  
Associate State Director.

[FR Doc. 78-36259 Filed 12-28-78; 8:45 am]

[4310-84-M]

## Bureau of Land Management

### CAMPBELL AND CONVERSE MANAGEMENT FRAMEWORK PLANS

#### Intent

DECEMBER 22, 1978.

This notice is to advise you that the Casper, Wyoming District Office, Bureau of Land Management, is proceeding to review and supplement portions of the Campbell and Converse Management Framework Plans (MFPs) to make certain that the MFPs reflect, as completely as possible, existing statutory requirements and policies and to begin to carry out the requirements of the Federal Lands Review mandated by Section (522)(C) of the Surface Mining Control and Reclamation Act (SMCRA).

Background, standards and procedures for this MFP review and supplement preparation are contained in FEDERAL REGISTER Notice 43 FR 57662-57670 of December 8, 1978. The standards for this review are also discussed in a draft environmental statement, describing the Secretary of Interior's proposed coal program and alternatives, which was released for review on December 15, 1978 (43 FR 58776-58778).

Comments on revisions in the unsuitability criteria, through the environmental statement process as well as through participation in the MFP review process, are welcome.

For further information on the areas being reviewed, please contact: District Manager, Bureau of Land Management, 951 Union Boulevard, Casper, Wyoming 82601, (307) 265-5550 Ext. 5101.

DANIEL P. BAKER,  
State Director.

[FR Doc. 78-36305 Filed 12-28-78; 8:45 am]

[4310-84-M]

### HANNA AND OVERLAND MANAGEMENT FRAMEWORK PLANS

#### Intent

DECEMBER 22, 1978.

This notice is to advise you that the Rawlins, Wyoming District Office, Bureau of Land Management, is proceeding to review and supplement portions of the Hanna and Overland Management Framework Plans (MFPs) to make certain that the MFPs reflect, as completely as possible, existing statutory requirements and policies and to begin to carry out the requirements of the Federal Lands Review mandated by Section (522)(C) of the Surface Mining Control and Reclamation Act (SMCRA).

Background, standards and procedures for this MFP review and supplement preparation are contained in FEDERAL REGISTER Notice 43 FR 57662-57670 of December 8, 1978. The standards for this review are also discussed in a draft environmental statement, describing the Secretary of Interior's proposed coal program and alternatives, which was released for review on December 15, 1978 (43 FR 58776-58778).

Comments on revisions in the unsuitability criteria, through the environmental statement process as well as through participation in the MFP review process, are welcome.

For further information on the areas being reviewed, please contact: District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

DANIEL P. BAKER,  
State Director.

[FR Doc. 78-36306 Filed 12-28-78; 8:45 am]

[4310-84-M]

## IDAHO

### Wilderness Inventory

Notice is hereby given that the Bureau of Land Management is conducting a statewide wilderness inventory of the public lands in Idaho.

The first step in this inventory process is to identify the public lands that clearly and obviously do not meet the criteria for identification as wilderness study areas, and those lands that may possibly meet the criteria and should receive more intensive inventory.

The inventory is being conducted according to the procedures outlined in the Bureau's Wilderness Inventory Handbook. The public is invited to participate in this initial inventory phase. As proposed decisions are developed, they will be announced in a subsequent notice and public meetings/workshops will be held.

Further information or copies of the Wilderness Inventory Handbook are available from the Idaho State and District Offices of the BLM.

Addresses: Bureau of Land Management, Idaho State Office, Box 042, Federal Building, Boise, Idaho 83724; Bureau of Land Management, Boise District, 230 Collins Road, Boise, Idaho 83702; Bureau of Land Management, Burley District, Route 3, Box 1, Burley, Idaho 83318; Bureau of Land Management, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401; Bureau of Land Management, Salmon District, P.O. Box 430, Salmon, Idaho 83467; Bureau of Land Management, Shoshone District, P.O. Box 2-B, Shoshone, Idaho 83352; Bureau of Land Management, Coeur d'Alene District, P.O. Box 1889, Coeur d'Alene, Idaho 83814.

Dated: December 22, 1978.

WILLIAM L. MATHEWS,  
Idaho State Director,  
Bureau of Land Management.

[FR Doc. 78-36303 Filed 12-28-78; 8:45 am]

[4310-84-M]

(NM 35484)

## NEW MEXICO

### Application

DECEMBER 20, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northern Natural Gas Company has applied for one 12 1/4-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 21 E.,  
Sec. 13, N 1/4 N 1/4 and SW 1/4 NW 1/4;  
Sec. 14, S 1/4 NE 1/4, N 1/4 SW 1/4 and NW 1/4 SE 1/4;  
Sec. 15, SE 1/4 SW 1/4, E 1/4 SE 1/4 and SW 1/4 SE 1/4;  
Sec. 20, NE 1/4 NE 1/4;  
Sec. 21, N 1/4 N 1/4;  
Sec. 22, N 1/4 NW 1/4.

T. 19 S., R. 23 E.,  
Sec. 1, lots 1, 2, 3 and S 1/4 NW 1/4;  
Sec. 2, SE 1/4 NW 1/4 and N 1/4 SW 1/4;  
Sec. 3, S 1/4 SW 1/4, N 1/4 SE 1/4 and SW 1/4 SE 1/4;  
Sec. 4, S 1/4 SE 1/4;  
Sec. 9, NW 1/4 NE 1/4;  
Sec. 18, lot 1 and NE 1/4 NW 1/4.  
T. 18 S., R. 24 E.,  
Sec. 31, SE 1/4 SW 1/4 and S 1/4 SE 1/4;  
Sec. 33, S 1/4 NW 1/4 and NW 1/4 SW 1/4.  
T. 19 S., R. 24 E.,  
Sec. 6, lots 3 and 4.  
T. 18 S., R. 26 E.,  
Sec. 19, S 1/4 NE 1/4.  
T. 18 S., R. 27 E.,  
Sec. 11, S 1/4 SE 1/4;  
Sec. 17, S 1/4 N 1/4 and NW 1/4 SW 1/4.

This pipeline will convey natural gas across 12.302 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc. 78-36307 Filed 12-28-78; 8:45 am]

[4310-84-M]

### SOCORRO DISTRICT GRAZING ADVISORY BOARD

#### Meeting

Notice is hereby given that the Socorro District Grazing Advisory Board of the Bureau of Land Management will meet on Wednesday February 14, 1979 at 9:00 a.m. in the Hospitality Room of the First State Bank, 103 Manzanares Avenue, N.E., Socorro, New Mexico. The purpose of the meeting will be to organize the Board and discuss its functions and responsibilities, review the Federal grazing regulations, hold discussions on the allotment management plan implementation schedule for the Stallion and Ladron Planning Units, review the status of the district's range programs and make recommendations on the expenditure of range betterment funds.

The meeting is open to the public. Further information concerning this meeting may be obtained from the Socorro District Manager, Bureau of Land Management, 200 Neel Avenue,

N.W., Socorro, New Mexico 87801 or by telephone at (505)-835-0412.

ARLEN P. KENNEDY,  
District Manager.

DECEMBER 21, 1978.

[FR Doc. 78-36304 Filed 12-28-78; 8:45 am]

[4310-17-M]

## Office of the Solicitor

### VALID EXISTING RIGHTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

#### Retractivity of Secretarial Order No. 3029

SECTION 1. *Purpose.* The purpose of this notice is to announce the procedures under which the question of the retroactive application of Secretarial Order No. 3029 will be considered by this Department.

SEC. 2. *Background.* On November 27, 1978, Secretarial Order No. 3029, amending the Departmental position regarding valid existing rights under the Alaska Native Claims Settlement Act (ANCSA), was published in the FEDERAL REGISTER (43 FR 55287). As noted in the October 24, 1978, memorandum to the Secretary, adopted by the Secretary as the position of the Department on the subject of valid existing rights under ANCSA, the question of the retroactive application of Secretarial Order No. 3016, the Order which Secretarial Order No. 3029 has replaced, was not addressed in the original opinion of November 28, 1977, adopted by the Secretary in Secretarial Order No. 3016, nor was this question adequately presented as an issue for reconsideration. Section 2 of Secretarial Order No. 3029 noted: "The question of retroactive application of this Order shall be addressed by the Solicitor under procedures which shall be announced by him within 30 days of this Order's effective date." Pursuant to this delegation from the Secretary, such procedures are set forth in Section 3 of this notice.

SEC. 3. *Policy.* (a) All parties who have participated in the administrative proceedings which will be affected by the determination of the question of the retroactive application of Secretarial Order No. 3029, and all other interested parties, are given 30 days from the date of this notice to submit any written comments on this question to the Department. Comments should be sent to: Solicitor, United States Department of the Interior, Washington, D.C. 20240.

(b) After review and analysis of the submissions, a separate opinion on this question will be issued. The Secretary has reserved the final authority to determine the question of the retroactive application of Secretarial Order No. 3029, and will do so in an amendment to said Order.

Sec. 4. *Effective Date.* This notice is effective immediately and will continue in effect until the issuance of the amendment to Secretarial Order No. 3029.

Dated: December 26, 1978.

LEO KRULITZ,  
Solicitor.

[FR Doc. 78-36334 Filed 12-28-78; 8:45 am]

[4710-07-M]

### INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

#### United States Section

#### IMPLEMENTATION OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: The purpose of this document is to publish the United States Section's Final Procedures to be effective March 29, 1979.

SUMMARY: The procedures prescribe policies and procedures utilized or to be utilized by the United States Section in implementing Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) in the planning, design and construction of treaty projects along the United States and Mexican international boundary and to the United States Section's operation and maintenance activities in connection with treaty projects. The final procedures are designed to be coordinated with the environmental review of requirement established in the National Environmental Policy Act (NEPA).

#### FOR FURTHER INFORMATION CONTACT:

Mr. Frank P. Fullerton, Legal Adviser, International Boundary and Water Commission, United States Section, United States and Mexico, 4110 Rio Bravo, 200 IBWC Building, El Paso, Texas 79902, FTS: 572-7893.

PROCEDURES OF THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, TO IMPLEMENT THE OBJECTIVES OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

Executive Order 11988—Floodplain Management (May 24, 1977)—requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect



consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Water Resources Council "Guidelines for Implementing Executive Order 11988", dated February 10, 1978.

Executive Order 11990—Protection of Wetlands (May 24, 1977)—requires all Federal agencies to issue or amend existing procedures to insure consideration of wetlands protection in decision making.

It is the intent of both Executive Orders that Federal agencies implement the floodplain/wetlands requirement through existing procedures such as those established to implement the National Environmental Policy Act of 1969 (NEPA). In those instances where the impact of actions in floodplain/wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under Section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

#### PURPOSE

The United States Section has adopted or reaffirms the following described policy and procedures to assure responsiveness to the objectives, needs and intent of Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) to: (1) reduce the risk of flood loss, (2) minimize the impact of floods on human safety, health and welfare, (3) restore and preserve the natural and beneficial values served by floodplains along the limitrophe section of the Rio Grande and the Colorado River, (4) prohibit the destruction or modification of wetlands, (5) prohibit new construction in the floodplains and wetlands within the United States along the limitrophe section of the Rio Grande and the Colorado River, (6) describe the decision-making process to be utilized by the Section, including public notice, (7) provide the opportunity for early public review of any proposed action of the Section by means of meetings and hearings, to assure input of public concerns as well as the consideration of the provisions of any treaty and agreement between the United States and Mexico, (8) describe the evaluations to be made by the Section of practicable alternatives of proposed actions in the floodplains and the wetlands in the limitrophe section of the Rio Grande and the Colorado River, (9) describe the limitations on activities in floodplains and wetlands, (10) provide conspicuous delineation of structures and other places, where appropriate, of past and probable flood heights, (11) provide appropriate restrictions in permits, licenses, and in conveyances and uses of

Federal property under the jurisdiction of the United States Section, and (12) seek the cooperation of the city, county and state officials in preventing construction of work in the floodplains along the limitrophe section of the Rio Grande and Colorado River which may obstruct the normal or flood flows of those rivers.

#### POLICY

The United States Section has a general mandate and broad responsibility to reduce to a minimum the shifting of the channels of the Rio Grande and Colorado River by prohibiting the construction of works in the floodplain/wetlands which may cause deflection or obstruction of the normal flow of the rivers or of their flood flows. In the boundary area (United States and Mexico), the policy of the United States Section is to exercise leadership and take action to avoid the adverse impacts caused by the occupancy and modification of floodplains and wetlands.

The United States Section will integrate floodplain management and wetland protection requirements into its programs and missions and will utilize, to the extent practicable, existing consultation, planning and decision-making processes.

The United States Section shall:

1. Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative;
2. Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision-making processes, and shall to the extent practicable:
  - a. Reduce the hazard and risk of flood loss;
  - b. Minimize the impact of floods on human safety, health, and welfare;
  - c. Restore and preserve natural and beneficial values served by floodplains;
  - d. Require the construction of United States Section structures and facilities to be in accordance with the standards and criteria, and consistent with the intent, of the regulations promulgated pursuant to the National Flood Insurance program;
  - e. Minimize the destruction, loss, or degradation of wetlands;
  - f. Preserve and enhance the natural and beneficial values of wetlands.
3. Undertake a careful evaluation of the potential effects of any United States Section action taken in a floodplain and any new construction undertaken by United States Section in wetlands not located in floodplain;

4. Identify, evaluate, and implement, as appropriate, alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts;
5. Provide opportunity for public review of actions proposed in floodplains and wetlands; and
6. Prohibit the construction of works in the floodplain/wetlands which may cause deflection or obstruction of the normal flow of the Rio Grande and the Colorado River or of their flood flows.

#### DEFINITIONS

For the purpose of these procedures, the following terms shall have the meaning indicated:

1. "The Commissioner" means the United States Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico.
2. "United States Section" means the United States Section, International Boundary and Water Commission, United States and Mexico.
3. "Executive Order" means Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands).
4. "Limitrophe parts of the Rio Grande and Colorado River" means those reaches of the rivers that form the international boundary between the United States and Mexico.
5. "Wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs and similar areas such as sloughs, pot-holes, wet meadows, river overflows, mud flats and natural ponds.
6. "Action" means any United States Section activity, including:
  - a. Acquiring, management, and disposing of Federal lands and facilities;
  - b. Providing federally undertaken, financed, or assisted construction and improvements; and
  - c. Conducting Federal activities and programs affecting land use, including but not limited to water and regulated land resources planning, regulating and licensing activities.
7. "Base Flood" means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.
8. "Base Floodplain" means the 100-year floodplain (one percent chance

floodplain). Also see definition of floodplain.

9. "Channel" means a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.
10. "Critical Action" means any activity for which even a slight chance of flooding would be too great.
11. "Facility" means any man-made or man-placed item other than a structure.
12. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source.
13. "Floodplain" means lowlands and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).
14. "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.
15. "Minimize" means to reduce to the smallest possible amount or degree.
16. "One Percent Chance Flood" means the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in 100-year period.
17. "Ordinary High Water Mark" means the line on the shore established by an analysis of all daily high waters. It is established as that point that is inundated 25 percent of the time and is derived by a flood duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as shelving, change in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.
18. "Practicable" means capable of being done within existing constraints. The test of what is practicable de-

pends upon the situation and includes consideration of the pertinent factors, such as environment, cost, technology, natural, social, economic, legal and implementation time.

- a. Natural—topography, habitat, and hazards, etc.
- b. Social—aesthetics, historic and cultural values, land use patterns, population and its characteristics, etc.
- c. Economic—cost of space, construction, services, relocation, gain or loss of employment.
- d. Legal—international treaties and agreements, congressional acts, leases and deeds.
19. "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.
20. "Restore" means to re-establish a setting or environment in which the natural functions of the floodplain can again operate.
21. "Structures" means a walled or roofed building, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).
22. "Environmental Assessment" means a document prepared by the Section pursuant to the National Environmental Policy Act (NEPA) and the Section's procedures for implementing Section 102 of NEPA dated March 5, 1974, which assesses whether a proposed Section action would be "major federal action" and would "significantly affect" the quality of the human environment and which serves as the basis for a determination as to whether an environmental impact statement is required.
23. "Environmental Impact Statement" (EIS) means a document prepared in accordance with the requirements of Section 102(2)(C) of NEPA.
24. "New Construction" for the purpose of compliance with the Executive Orders shall include draining, dredging, channelizing, filling, diking, impounding and related activities and any structures or facilities begun or authorized after May 24, 1977 (date of the Executive Orders), and not granted a specific exemption by the Executive Orders.
25. "Negative Declaration" (ND) means a document prepared pursuant to the Section's procedures for implementing Section 102 of NEPA to certify a decision that an EIS will not be prepared for a proposed Section action.
26. "Public Notification" (PN) means a brief notice published in the FEDERAL REGISTER which describes a proposed floodplain/wetlands action and affords the opportunity for public review.
27. "Statement of Findings" means a statement issued pursuant to Execu-

tive Order 11988 which explains why a Section action is proposed in a floodplain, lists the alternatives considered, indicates whether the action conforms to applicable floodplain protection standards, and describes steps to be taken to minimize harm to or within the floodplain.

#### AUTHORITY

1. Executive Order 11988, which revoked and replaced Executive Order 11296, issued August 10, 1966, was issued in furtherance of the National Flood Disaster Protection Act of 1973, and the National Environmental Policy Act of 1969. Section 2(d) requires issuance of new or amended agency regulations.
2. Executive Order 11990 was issued in furtherance of the National Environmental Policy Act of 1969. Section 6 requires issuance of new or amended procedures.

#### REFERENCES

- The following references are made an integral part of these procedures:
1. National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C.A. 4332);
  2. Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970;
  3. Executive Order 11988, Floodplain Management, May 24, 1977;
  4. Executive Order 11990, Protection of Wetlands, May 24, 1977;
  5. "Unified National Program for Floodplain Management", Water Resources Council, July 1976;
  6. "Guidance for Floodplain Management", Water Resources Council, 42 FEDERAL REGISTER 52590, September 30, 1977;
  7. "Guidelines for Implementing Executive Order 11988", Water Resources Council, 43 FEDERAL REGISTER 6030, February 10, 1978;
  8. "Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969", March 5, 1974, United States Section, International Boundary and Water Commission;
  9. 1970 Boundary Treaty (Treaties and other International Acts Series 7313);
  10. American Mexican Boundary Treaty Act (Public Law 92-549);
  11. 1944 Water Treaty (Treaty Series 994);
  12. National Flood Insurance Program, Federal Insurance Administration (Department of Housing and Urban Development), 41 FEDERAL REGISTER 46962 and 43 FEDERAL REGISTER 2570.

#### APPLICABILITY

Except as stated hereinafter, these procedures are applicable to all activities under the jurisdiction of the



United States Section to carry out the United States obligations as defined in the boundary and water treaties with Mexico which may involve the construction or development in the floodplains or the modification or destruction of wetlands. Existing and proposed projects and programs, including licensing and permitting are included. Activities to which these provisions will not be applicable are:

1. Actions taken during and immediately following flood or other emergencies to save lives and to protect property and public health and safety;
2. The repair and maintenance of existing facilities and structures;
3. Modification of stream gaging stations;
4. Flood proofing or flood protection of existing structures or facilities within the floodplain; and
5. Actions which may be in conflict with Treaty obligations.

However, where unusual circumstances exist, the Section shall consider the need for a floodplain/wetlands assessment of these types of actions.

#### REPAIR OR IMPROVEMENT OF EXISTING STRUCTURES AND FACILITIES

The following actions relating to repair or improvement of existing structures and facilities will be accomplished in a manner to increase the useful life of the facility, reduce flood hazards, and protect and, where practical, restore natural values.

1. **Improvement and Maintenance of River Channels.** In compliance with the treaties and other agreements between the United States and Mexico and acts of the Congress, the United States Section excavates material from the channels of certain reaches of boundary rivers by use of mechanical equipment to maintain a definite channel for boundary location purposes, to conserve water and make required treaty water deliveries, and to maintain effective control of floods. The need for these actions is specified in the international agreements.

The material removed from the river is deposited in the following locations: within the project floodplain, land side of the project levees, and on other lands—private and government-owned, beyond the project, subject to the approval of the owners or those having jurisdiction. None of the excavated material will be deposited on wetlands. The selection of the particular area of deposition will be based upon available alternatives, ecological considerations, costs, flood hazards, and impact upon the floodplain. The removed material in some cases is made available to the private sector for utilization away from the project and the Section may authorize such removal by the private sector in accordance with its require-

ments, provided it does not dispose of materials on wetlands.

2. **Bank Stabilization, Boundary Preservation and Flood Control.** In carrying out its operational and maintenance activities where necessary to stabilize United States banks of the boundary rivers to preserve the international boundary between the United States and Mexico and to maintain its effective flood channel capacity, the Section may need to grade the banks, and to add riprap or other types of bank protection. Bank protection may also be required for public facilities, such as municipal water intakes, bridge abutments and sewage and irrigation wasteway outfalls.

3. **Clearing Vegetation.** To maintain the water carrying capacity of the river channels and to preserve the international boundary, the clearing operations of the United States Section, at times and in some areas, require the removal of vegetation from certain portions of the banks and main channel of the rivers.

4. **Construction, Operation and Maintenance of Structures.** The United States Section constructs, operates and maintains structures along and across river boundaries and near the mouths of tributaries, including dams, grade control structures, levees, gaging stations and appurtenant works for measuring waters to provide data for effective project operation and to determine the national ownership of water, in accordance with treaties with Mexico.

The construction of these structures at times and in some places, requires construction of temporary works to protect the construction area from river flows. Maintenance of these structures is performed as necessary, and may include the addition of material in the channel or on lands adjacent to the channel.

#### CONSTRUCTION OF NEW WORKS

The actions of this Section involving construction of new works will comply with the procedures described herein.

#### PROCEDURES FOR COMPLIANCE

1. For activity requiring compliance with the Executive Orders, the United States Section staff will use the procedure as described herein, and will concurrently apply its procedures for environmental considerations under the National Environmental Policy Act.

2. Floodplain management principles and procedures will be taken into account when formulating or evaluating any water or land use proposal to insure that land and water resource use will be appropriate to the degree of hazard involved. Review of applications for licenses and permits shall include full consideration of flood haz-

ards to assure appropriate floodplain management.

3. Flood hazards and, to the degree they are quantifiable, floodplain values, will be expressed in terms of:

- a. Potential (or residuals) for monetary loss;
- b. Human safety, health and welfare;
- c. Shifting of costs or damage to others; and
- d. Potential for affecting the natural and beneficial floodplain values.

4. The procedures established herein shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and consistent with the intent of those promulgated under the National Flood Insurance Program. Deviations shall be acceptable only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility or are in conflict with treaty obligations.

5. The evaluation of whether an alternative is practicable shall include:

- a. Whether it is allowable under existing international treaties and agreements;
- b. In conformance with the Federal Insurance Administration's criteria and methods for minimizing flood damage; and
- c. Environmental, social, economic, and legal considerations.

#### DECISION MAKING PROCESS

STEP 1. Delineate the floodplain and determine if the proposed action is located in or may impact the floodplain.

a. Determine the base flood and delineate on an appropriate map the base floodplain, using the best available information.

b. In the event a critical action is being considered, the critical action floodway will be defined.

c. Define wetland areas and delineate these areas on the map with base floodplain delineation.

If the proposed action is not in the base floodplain (or critical floodplain as applicable), proceed to Step 4.

STEP 2. Issue a public notice as early as possible of possible action which may be in or impact the floodplain. The notice shall include a description of the proposed action, a listing of alternatives being considered, and an invitation to provide comments throughout the decision making process.

STEP 3. Identify and evaluate the practicable alternatives to locating in the floodplain. This evaluation shall include avoidance of the floodplain through alternative siting and alternative actions which would accomplish the intended functions but which would minimize harm to or within the floodplain, including no action.

STEP 4. Identify and evaluate impacts of the alternatives on the applicable floodplain and the direct and indirect effects which may support floodplain development that would have additional impacts. If the proposed action is outside the floodplain and has no identifiable impacts or support of floodplain development, it can be implemented (Step 8), providing it complies with wetland requirements defined later herein.

STEP 5. If the alternatives have adverse impacts in the floodplains or supports floodplain development, means are to be described to minimize the adverse impacts and where practical, restore natural values.

STEP 6. Reevaluate the alternatives, taking into account the flood hazards, identified impacts, opportunities to restore and preserve floodplain values, and environmental, social, economic and legal factors.

STEP 7. If it is determined that the only practicable alternative is locating in the floodplain, a statement of findings and public notice will be prepared, distributed and published. Depending upon the public input, a public hearing may be scheduled.

STEP 8. After a reasonable period to allow for public response, not less than fifteen (15) days, the Commissioner may take steps to implement the alternative.

Following are more detailed discussions of the procedures to implement the decision making process.

#### DELINEATION OF THE FLOODPLAIN

1. The procedure in delineating the base floodplain (base floodplain uses 100-year frequency flood and critical floodplain uses 500-year frequency flood) will be generally in accord with the "Guidance for Floodplain Management" published by the Water Resources Council, 42 Federal Register 52590, September 30, 1977.

2. The floodplain will be based on Flood Insurance Administration (FIA) maps. When FIA maps are not available, USGS quadrangle maps will be used with United States Section hydraulic studies and Flood Insurance Administration criteria for delineation of the extent of the base or critical floodplain.

#### PUBLIC INVOLVEMENT

1. For proposed floodplain/wetlands actions for which an Environmental Assessment or Environmental Impact Statement is required, the opportunity for early public review will be provided through existing NEPA procedures specified in this Section's Operational Procedures for Implementing Section 102 of NEPA. In these cases, either the Notice of Intent to prepare an Environmental Impact Statement or the Negative Declaration shall be used to

satisfy the requirements for early public notification.

2. For proposed floodplain/wetlands actions for which no Environmental Assessment or Environmental Impact Statement is required, the Section shall provide the opportunity for early public review through preparation of a Public Notification, which shall:

a. Describe the proposed action, segment of floodplain involved, and alternative being considered, and include a location map.

b. State the time and place of public hearing if one is to be held.

c. Be published in the FEDERAL REGISTER and one or more newspapers of general circulation in the area.

d. Be distributed to:

- (1) Property owners in immediate vicinity of the proposed action.
- (2) City and county governments in the vicinity of the proposed action.
- (3) Council of Governments and other agencies.
- (4) Conservation associations.
- (5) State and Federal agencies, including U.S. Fish and Wildlife Service and State Fish and Wildlife Agency.
- (6) Other interested agencies and individuals.

For floodplain action subject to the Office of Management and Budget Circular A-95, the Section shall submit a copy of the Public Notice to the State and area wide A-95 clearing houses for the geographic area affected.

The procedure to be followed for obtaining public input will vary with the proposed action to be undertaken. For more significant actions a public hearing will be held. This hearing may be preceded and/or followed by periodic consultation meetings with representatives of appropriate groups and agencies to scope the studies to be made. In contrast, a relatively insignificant action such as location in the floodplain of a new buried pipeline may be handled solely by a mailed and published notice without meetings or hearings.

#### IDENTIFICATION AND EVALUATION OF PRACTICABLE ALTERNATIVES

Alternatives to be evaluated include:

1. Carrying out the proposed action outside the applicable floodplain (alternative sites).
2. Other means which accomplish the same purpose as the proposed action (alternative actions); and
3. No action.

If a practicable site exists outside the applicable floodplain, the proposed action cannot be located in the floodplain. When a floodplain site is the only practicable alternative, the agency's analysis supporting this conclusion should be fully documented. In determining the practicability of a non-floodplain site, the general con-

cepts of site feasibility apply. At a minimum, site practicability shall include consideration of natural, social, economic, legal and environmental factors.

Alternative actions to be considered are those which can be substituted for the proposed action in that they comprise new solutions or approaches which serve the same function or purpose as that proposed, but which have less potential for harm.

For the alternative of no action, an evaluation should be made of the harm to or within the floodplain resulting from not undertaking the proposed action.

#### IDENTIFICATION OF IMPACTS OF THE PROPOSED ACTION

The impacts of the proposed action to be identified are impacts upon:

1. Lives and property.
2. Natural and beneficial floodplain values, including environmental values.

The basic types of impacts to be evaluated are:

1. Positive and negative.
  2. Concentrated and dispersed.
  3. Short-term and long-term.
- Factors to be considered are:
1. The nature of the hazard and risk.
  - a. Historical floods.
  - b. Probability floods.
  2. High hazard areas.
  3. Natural moderation of floods.
  4. Water quality maintenance.
  5. Groundwater recharge.
  6. Living resources—flora and fauna.
  7. Cultural resources.
  8. Agricultural, aquacultural, and forestry resources.

#### REQUIREMENTS TO MINIMIZE, RESTORE AND PRESERVE

The evaluation of a proposed action shall include consideration of means to minimize potential harm to or within the floodplain and shall include:

1. Reduction of potential harm to life and property within the floodplain with a goal of avoiding increased flood loss potential associated with the level of the base flood prior to the proposed action.
2. Minimizing potential harm applies to:
  - a. The investment risk, or the flood loss potential of the action itself;
  - b. The impact the action may have on others; and
  - c. The impact the action may have on floodplain values.
3. In the context of the Orders, "restore" focuses upon conditions existing as a result of prior actions, while "preserve" focuses upon the impacts of proposed action.

When a proposed action will result in harm to the natural floodplain environment, the Section will design or



modify the action to assure that it will be carried out in a manner which preserves as much of the natural and beneficial floodplain values as is possible. Guidance for possible means of preserving the floodplain are given by the Water Resources Council in its "Guidelines for Implementing Executive Order 11988 (Floodplain Management)", 43 Federal Register 6030, February 10, 1978.

#### REEVALUATION OF ALTERNATIVES

1. Determine which, if any, of the alternatives which are located outside or do not impact the base floodplain are implementable. Where such an alternative exists, the proposed action cannot be located in the floodplain.

2. Where an implementable alternative exists outside the floodplain but which has impact on or supports floodplain development, actions will be taken to minimize that impact and support.

3. If no implementable alternative exists outside the floodplain, the impacts of the floodplain alternative shall be thoroughly evaluated and measures to minimize those impacts and restore natural values shall be identified.

#### FINDINGS AND PUBLIC EXPLANATION

If the reevaluation results in the determination that there is no practicable alternative to locating in or impacting the floodplain, a statement of findings and public explanation shall be published in the FEDERAL REGISTER and provided to news media and sent to agencies, groups, and individuals previously contacted. The statement and public explanation shall include:

1. An explanation indicating why the proposed action is to be located in the floodplain;

2. A description of all significant facts considered in making the determination including alternative sites and actions;

3. A statement indicating whether the actions conform to applicable state or local floodplain guidelines;

In addition, and in keeping with the concept of the over all public involvement process discussed in Step 2, the following items should be included in the statement of findings and public explanation:

1. A description of why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action;

2. A description of how the activity will be designed or modified to minimize harm to or within the floodplain;

3. A statement indicating how the action affects natural or beneficial floodplain values;

4. A statement listing other involved agencies and individuals;

5. A provision for a brief comment period prior to agency action (15 to 30 days).

#### IMPLEMENTING THE ACTION

The proposed action can be implemented after:

1. Steps 1 through 7 of the decision-making process have been completed.

2. Comments received have been considered and a conclusion reached that the findings are still valid.

3. Environmental procedures have been completed under the National Environmental Policy Act.

4. A determination has been made that the proposed action is in accord with Executive Order 11990 in regard to wetlands.

#### WETLANDS

Wetlands will be delineated on appropriate maps for areas in and adjacent to projects of the United States Section, and in reaches of the Rio Grande, Colorado River, and other streams crossing the international boundary which may be considered for proposed activity. In making the wetlands determination, the Section shall utilize United States Fish and Wildlife Service National Wetlands Inventory Map, where available.

Operation and maintenance activities will be programmed to not adversely impact wetlands.

Evaluations of proposed new activities shall include consideration of an alternative which does not adversely impact wetlands. One or more alternative will be considered which include mitigation features for wetlands impacted in the event that alternative is selected as the proposed action.

#### MANAGING AND DISPOSAL OF FEDERAL LANDS

##### 1. Management:

##### a. Licenses or Permits:

An application for a license must be accompanied by an environmental impact assessment as required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and where major adverse impact will result, the applicant shall furnish a detailed environmental impact statement as required by the National Environmental Policy Act.

Since all of the lands administered by the United States Section are within floodplain areas, no permanent improvements will be licensed except those that are not subject to flood damages or are floodproofed in accordance with the Unified National Program for Flood Plain Management of the Water Resources Council. If, upon examination of the application, it is found that the proposed work or its operation and maintenance will not interfere with the construction, operation and maintenance of any project

works of the United States Section, and is consistent with permissible floodplain uses defined in the National Flood Insurance Program (Federal Insurance Administration), a license will be prepared by the Commission and transmitted to the applicant.

##### b. Leases:

All leases will contain provision to assure that the activities authorized are consistent with permissible floodplain uses defined in the National Flood Insurance Program (Federal Insurance Administration), and comply with the Executive Orders.

##### 2. Disposal:

##### a. By United States Section:

The conveyances from the United States of America will, where applicable, incorporate a prohibition against filling of areas identified as wetlands and will contain a statement defining the potential flood hazards.

##### (1) Typical Provisions are:

**Wetlands:** That portion of the above-described land lying within the old riverbed of the Rio Grande, consisting of approximately—acres, is classed as "wetlands", as defined in Executive Order 11990, May 24, 1977, and is therefore protected and prohibited from destruction or degradation.

**Flood Hazards:** As directed by Executive Order 11988 (Floodplain Management, May 24, 1977), the Grantee is put on notice that all the lands described above are subject to a one percent or greater chance of flooding in any given year.

##### b. By General Services Administration:

The Report of Excess for Real Property (SF118, GSA) submitted by the United States Section, will reflect detailed information regarding known wetlands and any known flood hazards or flooding of the property.

#### PROCEDURES FOR DELINEATION OF PAST AND PROBABLE FLOOD HEIGHTS

The following procedures have been adopted in order to meet the requirements of Executive Order 11988 (Floodplain Management):

1. Issuance of public notices to the general public, all owners, lessees, and users of lands along the Rio Grande each year prior to the beginning of the flood season notifying that lands along the banks of the river are subject to flooding by releases from Commission dams and flood inflows from tributaries to the Rio Grande. The information provides data with respect to highest flood on record and possible river stages for different flood frequencies.

2. Prior to anticipated floods, issue information to the public by use of radio, television, state and local authorities and United States Section flood patrols, to evacuate flood danger areas.

3. At dams, place signs delineating areas restricting access and usage by the general public.

4. Encourage local, county and state agencies to seek legislation restricting the use of flood danger areas by public where the United States Government does not have authority to restrict the use of such areas.

5. Along floodways used during major floods, place signs at intersections with public roads informing the public the area is subject to flooding.

#### PROHIBITION OF CONSTRUCTION

To assure compliance with the Boundary Treaty of 1970, annually, usually in January or February, the Section will seek in writing, the cooperation of the city and county officials and their staffs, along the limitrophe parts of the Rio Grande and Colorado River, as well as state officials, to advise those who may desire to construct works on lands within the floodplain and adjacent to the main channel of the Rio Grande and Colorado River, where it forms the international boundary between the United States and Mexico, that plan for works be approved by the International Boundary and Water Commission before any work is performed. The appropriate officials will be requested to confer with the Section prior to approving plans for works along the limitrophe part of the rivers unless they have the prior approval of the Commission.

#### REFINING PROCEDURES

Refinements will be made to these procedures from time to time as experience is gained in their implementation.

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#### DEPARTMENT OF JUSTICE

##### Antitrust Division

#### UNITED STATES v. NU-PHONICS, INC., ET AL.

##### Proposed Final Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) through (h), that a proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the Eastern District of Michigan, Southern Division, Civil No. 671378, *United States v. Nu-Phonics, Inc., et al.* The Complaint in this case alleges that four corporations (Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; and Eastside Hearing Aid Center, Inc.), one partnership (Downriver Hearing Aid Center), and four in-

dividuals (Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center; Allan M. Kazel, d/b/a Metro Hearing Aid Center; and William T. Lafler, d/b/a Oakland County Hearing Aid Service) combined and conspired to fix, raise, and maintain the prices at which hearing aids were sold in the Detroit area (Wayne, Macomb, and Oakland Counties).

The proposed Judgment enjoins the defendants from engaging in the alleged conspiracy and prohibits them from communicating certain pricing information to other hearing aid dealers in the Detroit area.

Public comment is invited within the statutory 60 day time period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070).

Dated: December 19, 1978.

CHARLES F. B. McALEER,  
Special Assistant for  
Judgment Negotiations.

#### U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

*United States of America, Plaintiff, v. Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; Eastside Hearing Aid Center, Inc.; Downriver Hearing Aid Center; Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center; Allan M. Kazel, d/b/a Metro Hearing Aid Center; and William T. Lafler, d/b/a Oakland County Hearing Aid Service, Defendants.*

Civil No. 671378.  
Judge Charles W. Joiner.  
Filed: December 19, 1978.

#### STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceeding.

Dated: December 19, 1978.  
John H. Shenefield, Assistant Attorney General, William E. Swope, Charles B.

McAleer, John A. Weedon, Attorneys, Department of Justice. David F. Hils, Susan B. Cyphert, Dan Aaron Polster, Attorneys, Department of Justice, Antitrust Division. Kenneth J. Haber, Assistant United States Attorney.  
For the defendants: William J. Weinstein, Esquire, Royal G. Targan, Esquire, Clyde B. Pritchard, Esquire, David R. Kratze, Esquire, William A. Sankbell, Esquire, Alan R. Miller, Esquire, Richard Zipser, Esquire.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION  
Civil No. 671378—Judge Charles W. Joiner—  
Filed: December 19, 1978.

UNITED STATES OF AMERICA, Plaintiff, v. NU-PHONICS, INC.; LUCAS, INC.; FERNDAL HEARING AID CENTER, INC.; EASTSIDE HEARING AID CENTER, INC.; DOWNRIVER HEARING AID CENTER; DANIEL F. BIFANO, d.b.a. CADILLAC HEARING AID & OPTICAL CO.; MURRAY DAVIS PEP-PARD, d.b.a. DEARBORN HEARING AID CENTER; ALLAN M. KAZEL, d.b.a. METRO HEARING AID CENTER; and WILLIAM T. LAFLE, d.b.a. OAKLAND COUNTY HEARING AID SERVICE, Defendants.

#### FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 30, 1976 and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment without further trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

NOW, THEREFORE, before any other testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

#### I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a claim against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." (15 U.S.C. § 1), commonly known as the Sherman Act, as amended.

#### II

As used in this Final Judgment:

(A) "person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "hearing aid" means an electrical device which is usually worn by an individual and which assists the individual's ability to hear;

(C) "hearing aid dealer" means a person who sells hearing aids to the public or to the State of Michigan;

(D) "Detroit area" means the counties of Wayne, Macomb, and Oakland in the State of Michigan.

#### III

The provisions of this Final Judgment applicable to each of the defendants shall also



apply to each of its officers, directors, partners, agents, employees, subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

## IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing any contract, agreement, understanding, plan, program or concert of action with any other hearing aid dealer in the Detroit area, directly or indirectly, to:

- (A) refrain from giving price quotations for hearing aids over the telephone;
- (B) refrain from advertising prices for hearing aids;
- (C) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

## V

Each defendant is enjoined and restrained from, directly or indirectly:

(A) communicating to any other hearing aid dealer in the Detroit area information concerning:

- (1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;
- (2) the fact that such defendant is considering making changes or revisions in the prices, markups, or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;
- (B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of this Section V.

## VI

Nothing in Section V hereof shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

## VII

Each defendant is ordered and directed: (A) within thirty (30) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its employees who has pricing responsibility in connection with the sale of hearing aids;

(B) after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after employment;

(C) to attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this section VII a statement, in substantially the form set forth in Appendix A attached hereto, advising each person of his obligations and defendants' obligations under this Final Judgment, and of the penalties which may be imposed upon him and/or upon the defendants for violation of this Final Judgment.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

## IX

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

## X

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

## APPENDIX A

The Final Judgment entered in 1978 in this case applies to each of the defendants named therein, to defendants' officers, directors, agents, employees, and subsidiaries. It is the obligation of each defendant and of its officers, directors, partners, agents and employees to abide by the terms of the Final Judgment. Violation of any of the provisions of the said Final Judgment may subject each defendant and its officers, directors, partners, agents and employees to fines and/or imprisonment.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Civil No. 671378—Judge Charles W. Joiner—  
Filed: December 19, 1978

UNITED STATES OF AMERICA, Plaintiff,  
V. NU-PHONICS, INC.; LUCAS, INC.;  
FERNDAL HEARING AID CENTER,  
INC.; EASTSIDE HEARING AID  
CENTER, INC.; DOWNRIVER HEARING  
AID CENTER; DANIEL F. BIFANO,  
d.b.a. CADILLAC HEARING AID & OPTICAL  
CO.; MURRAY DAVIS PEP-  
PARD, d.b.a. DEARBORN HEARING  
AID CENTER; ALLAN M. KAZEL, d.b.a.  
METRO HEARING AID CENTER; and  
WILLIAM T. LAFLE, d.b.a. OAKLAND  
COUNTY HEARING AID SERVICE, De-  
fendants.

## COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust procedures and penalties Act, 15 U.S.C. §§ 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I

## NATURE AND PURPOSE OF THE PROCEEDING

On June 30, 1976, the United States filed a civil antitrust Complaint alleging that four corporations, one partnership, and four individuals, doing business as hearing aid dealers, conspired to fix prices in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleges that beginning at least as early as November 1974 and continuing thereafter at least until February 5, 1975, the defendants engaged in a combination and conspiracy to fix, raise, and maintain the prices at which hearing aids were sold in the Detroit area (Wayne, Macomb, and Oakland Counties).

The Complaint seeks a judgment by the Court declaring that defendants had engaged in an unlawful combination and conspiracy in unreasonable restraint of trade in violation of the Sherman Act. It also seeks an Order by the Court to enjoin and restrain the defendants from such activities in the future.

The corporate defendants named in the Complaint are: Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; and Eastside Hearing Aid Center, Inc. The partnership named in the Complaint is Downriver Hearing Aid Center. The individual defendants named in the Complaint are Daniel F. Bifano, d.b.a. Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d.b.a. Dearborn hearing Aid Center; Allan M. Kazel, d.b.a. Metro Hearing Aid Center; and William T. Lafle, d.b.a. Oakland County Hearing Aid Service.

Defendants' activities which gave rise to this civil action were also the subject of a criminal felony indictment returned by a grand jury on June 30, 1976. The trial of the criminal case commenced on June 6, 1977. Before the United States completely presented its evidence, the trial was discontinued because the case was resolved in other ways. As to three of the defendants, the United States voluntarily dismissed the criminal charge because of the health of the principals. The remaining defendants pleaded *nolo contendere* to misdemeanor Informations which were filed by the United States. The felony indictment was dismissed and the Court sentenced these remaining defendants. This civil action had been held in abeyance until the criminal charge was resolved.

## II

## DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

Hearing aids are electrical devices worn by persons with hearing problems to assist them to hear better. Hearing aid dealers sell hearing aids and usually provide associated products and services. Hearing aid dealers are paid either by the patient or, if the patient is covered by a form of public assistance, by a State or local public agency.

During the period specified in the Complaint, the defendants were hearing aid dealers in the Detroit area. During 1974, defendants had revenues of approximately \$800,000 from the sale of hearing aids in the Detroit area.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning as early as November 1974 and continuing at least until February 5, 1975, the substantial terms of which were:

- (a) to refrain from giving price quotations for hearing aids over the telephone;
- (b) to refrain from advertising prices for hearing aids; and
- (c) to charge \$180 over cost for all State business (hearing aids sold to the public and paid for, in whole or in part, by a governmental entity or agency, including the State of Michigan and local public agencies).

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

- (a) prices for hearing aids in the Detroit area have been fixed, raised and maintained at artificial and noncompetitive levels;
- (b) price competition between the defendants and co-conspirators in the sale of hearing aids in the Detroit area has been restrained and eliminated; and
- (c) purchasers of hearing aids in the Detroit area have been deprived of the benefits of purchasing hearing aids in an open and competitive market.

## III

## EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment states that it constitutes no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the

proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest (Section X of the Final Judgment).

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV provides that the defendants are enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, understanding, plan, program, or concert of action with any other hearing aid dealer in the Detroit area, to:

- (a) refrain from giving price quotations for hearing aids over the telephone;
- (b) refrain from advertising prices for hearing aids;
- (c) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

Section V further enjoins each defendant from, directly or indirectly:

- (A) communicating to any other hearing aid dealer in the Detroit area information concerning:
  - (1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;
  - (2) the fact that such defendant is considering making changes or revisions in the prices, markups or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;
- (B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of Section V.

Section VII of the proposed Judgment orders and directs each defendant to:

- (A) furnish a copy of the Judgment to each of its employees who has pricing responsibility in connection with the sale of hearing aids within thirty (30) days after the date of entry of the Judgment;
- (B) furnish a copy of the Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after the new employee is employed; and
- (C) attach to each copy of the Judgment furnished pursuant to subsections (A) and (B) of Section VII a statement advising each person of his obligations and of the defendants' obligations under the Judgment, and of the penalties which may be imposed upon him and/or upon the defendant for violation of the Judgment.

There is one limited exception to the prohibition against the exchange of information set forth in Section V of the proposed Judgment. This exception, contained in Section VI of the proposed Judgment, provides that nothing in Section V of the Judgment shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

The proposed Judgment is applicable to each of the defendants and to the officers, directors, partners, agents, employees, and subsidiaries of each defendant, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Judgment by personal service or otherwise (Section III).

Standard provisions similar to those found in other antitrust consent judgments are contained in Section I, concerning jurisdiction of the Court, Section VIII, concerning investigation and reporting requirements, and Section IX, concerning retention of jurisdiction by the Court over the parties to this final Judgment.

## IV

## REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed final Judgment, any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may have had if the Judgment had not been entered. The Judgment may not be used, however, as *prima facie* evidence in private litigation pursuant to Section V(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

## V

## PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070), within the 60-day period provided by the Act. These comments and the Department's responses to them will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. Section IX of the proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

## VI

## ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the proposed Judgment provides appropriate relief against the violations charged in the Complaint.

## VII

## DETERMINATIVE MATERIALS AND DOCUMENTS

No other material or document of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15



U.S.C. § 16) was considered in formulating this proposed Judgment. Consequently, none is submitted pursuant to that Section.

JOHN A. WEEDON,  
Attorney, Department of Justice.

DAVID F. HILS,  
SUSAN B. CYPHERT,  
DAN AARON POLSTER,  
Attorneys, Department of Justice,  
Antitrust Division, 995 Celebrezze  
Federal Building, Cleveland, Ohio  
44199, (Telephone: 216-522-4074).

KENNETH J. HABER,  
Assistant U.S. Attorney.

Dated: December 19, 1978.

[FR Doc. 78-36267 Filed 12-28-78; 8:45 am]

[4410-05-M]

National Institute of Corrections

# ADVISORY BOARD OF THE NATIONAL INSTITUTE OF CORRECTIONS

## Bylaws

Notice is hereby given that the National Institute of Corrections (NIC) has amended the Bylaws which govern its affairs and operations as authorized under 18 U.S.C. Sections 4351-4353 (1974). The Bylaws (which were published in the FEDERAL REGISTER Vol. 41, No. 174—Tuesday, September 7, 1976 at pp. 37612-14) as amended follow.

ALLEN F. BREED,  
Director,  
National Institute of Corrections.

National Institute of Corrections

## Bylaws

### ARTICLE I—TITLE AND OBJECTS

The name of this organization shall be the Advisory Board of the National Institute of Corrections (NIC) hereinafter referred to as the Board of NIC or the Board.

Under the authority of 18 U.S.C. Sections 4351-4353 (1974) as provided for by Public Law 93-415, Title V, Part B hereinafter referred to as 18 U.S.C. Sections 4351-4353 (1974), NIC's overall goal is to aid in the development of more effective and humane federal, state and local correctional systems which will contribute to the safety of offenders, staff and the community by:

1. Providing the stimulus for cooperative and consolidated action by all groups impacting on corrections.
2. Establishing close working relationships with national, state and local correctional agencies.

3. Developing a larger sense of professionalism in corrections at all levels.

4. Drawing other professional groups into a closer relationship with correctional planning and practice.

In order to implement these objectives, 18 U.S.C. Sections 4351-4353 (1974) outlines five primary assistance areas that form the core of NIC's activities: training, research and evaluation, policy formulation and implementation, clearinghouse and publication, and technical assistance.

18 U.S.C. Sections 4351-4353 (1974) expressly charges the Board of NIC with both the authority and responsibility to develop and supervise the overall policy of NIC. The

primary responsibility of the Board in this regard shall be to review and approve the Annual Program Plan presented by the Director of NIC.

## ARTICLE II—ORGANIZATION

Section 1. *Membership and terms of office*—as required under 18 U.S.C. Sections 4351-4353 (1974), the Board of NIC shall consist of sixteen members:

Six individuals or their respective designees shall serve as ex officio members, these include: The Director of the Federal Bureau of Prisons, the Administrator of the Law Enforcement Assistance Administration, Chairman of the U.S. Parole Commission, the Director of the Federal Judicial Center, the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration and the Assistant Secretary for Human Development of the Department of Health, Education and Welfare. Any ex officio member of the Board who selects a designee to serve in his position shall notify the Board's chairman in writing of such action. This written notification must include the name and position of the designee. Any change in a respective designee must follow the same notification procedure.

Five members of the Board of NIC must qualify as practitioners at the federal, state or local level in the area of corrections. These individuals shall be appointed by the Attorney General for staggered terms, initially: one member shall serve for one year, one member for two years and three members for three years.

The five remaining members of the Board of NIC shall be selected from the private sector such as business, labor and education and shall have demonstrated an active interest in corrections. These five members shall be appointed by the Attorney General for staggered terms, initially: one member shall serve for one year, three members for two years and one member for three years.

Upon completion of the term of each of the ten members not serving ex officio, the Attorney General shall appoint successors who will each serve for a term of three years. Terms of appointment of each of the ten members not serving ex officio shall bear effective date of January 1.

Section 2. *Officers of the Board*—The Board shall elect annually a chairman and three vice-chairmen. These officers shall be elected by a simple majority vote of the Board. The term of the office for the chairman and vice-chairman shall be one year commencing upon completion of the Board's fall/winter meeting. No chairman or vice chairman shall serve more than two consecutive one year terms.

No ex officio member of the Board may serve as chairman of the Board. No designee may serve as an officer of the Board.

A. The Chairman shall:

1. Preside over all meetings of the Board.
2. Consult with Board members and the Director of NIC and develop an agenda for each meeting. The agenda shall include but not be limited to: a report from each standing committee or task force, a report from the Director of NIC, and any proposed amendment to these bylaws.

3. Appoint as many ad hoc committees or task forces as are necessary to assist NIC in the accomplishment of its objectives.

4. Appoint each vice-chairman elected by the Board to chair a specific standing com-

mittees established under these bylaws and appoint members of those committees.

5. Perform such other functions and duties as the Board may authorize or request within the parameters of NIC's legislation (18 U.S.C. Sections 4351-4353 (1974)).

The Chairman of the Board is entitled to vote only in the event of a tie. The Chairman of the Board is a member of all committees and task forces of the Board but shall not be entitled to a vote on any committee or task force of the Board. Nor shall the Chairman of the Board be counted in the quorum of any committee or task force.

In event of his absence the chairman shall designate in writing a vice-chairman who will serve in his place. In event of the long term incapacitation or demise of the chairman the following rule of succession shall be applied. If eligible, succession shall occur in descending order:

1. Chairman, Policy Review Committee.
2. Chairman, Fiscal Review Committee.
3. Chairman, Grant Review Committee.

B. Each vice-chairman shall:

1. Serve as a chairman of one of the three standing committees established under these bylaws. In the event of his absence the chairman of any committee of the Board must designate a replacement for the interim.

### Section 3. *Committee Structure*

A. *Standing Committees*—there shall be three standing Committees as follows: (1) Policy Review, (2) Fiscal Review, (3) Grant Review. Each of the standing committees will be composed of no more than five and not less than three members of the Board. Each standing committee shall be balanced as equally as possible with members from each of the three categories of Board members, i.e., ex officio, practitioners and private sector representatives. At no time shall more than two members from any one category serve on any one standing committee. No individual Board member shall serve on more than two standing committees at any one time. No designee may serve as chairman of a standing committee.

1. *Policy Review Committee*—this committee's responsibilities shall include:

- (a) reviewing all proposals and suggestions relating to policy and/or procedure governing the Board's operations.

- (b) reviewing all proposals or suggestion relating to general program areas within which NIC will commit its resources.

- (c) reviewing all proposed amendments to these bylaws.

- (d) reviewing all legislation impacting upon NIC. The committee shall report its recommendations to the Board.

2. *Fiscal Review Committee*—this committee's responsibilities shall include:

- (a) participating with the Director of NIC in the development of a long-range fiscal plan.

- (b) reviewing the fiscal allocations within the proceeding year's Annual Program Plan and making recommendations regarding funding adequacy and future funding. The committee shall report its recommendations to the Board.

3. *Grant Review Committee*—this committee's responsibilities shall include:

- (a) developing policy for grant review,
- (b) reviewing all documents and guidelines dealing with grant and contract funding.

- (c) making recommendations to the director of NIC on concept papers or applications that are within NIC's approved thrust areas

but whose requested funding exceeds \$300,000.

(d) serving in accordance with NIC's grant review policy as an appellate review board making recommendations to the Director of NIC in cases of appeal.

B. *Ad Hoc Committees and Task Forces*—the chairman is empowered to appoint as many ad hoc committees and task forces from the Board's membership as deemed appropriate to conduct the business of the Board. As with standing committees, representation on ad hoc committees should reflect, if possible, all three categories of Board membership as outlined in Article II, Section 1 of these bylaws. The nominating committee will be an ad hoc committee appointed annually by the chairman. This committee shall nominate a slate of candidates to replace each elected officer. Upon submission to the Board of its recommendations the committee shall be discharged.

## ARTICLE III—DIRECTOR OF NIC

As provided for by 18 U.S.C. Section 4351 (h) (1974), the Director of NIC shall be appointed by the Attorney General after consultation with the Board of NIC.

Under 18 U.S.C. Section 4351(h) (1974), the Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of NIC and may employ such staff, faculty and administrative personnel, subject to the Civil Service and classification laws, as are necessary to the functioning of NIC. The Director shall have the power to acquire and hold real and personal property for NIC and may receive gifts, donations, and trusts on its behalf. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board.

In accordance with the policies of the Board of NIC and applicable law, the Board of NIC delegates to the Director the authority to issue procedures, regulations and guidelines to implement these policies.

It shall be the primary duty of the Director of NIC to present NIC's Annual Program Plan to the Board, and to execute the Annual Program Plan upon Board approval.

The Director of NIC shall also have the following duties: (1) to provide appropriate staff support to the Board and its committees as may be necessary for the fulfillment of their duties, (2) to present a report to the Board of NIC at each meeting of the activities of NIC to date, (3) to maintain an up-to-date file of any written authorization which ex officio members of the Board of NIC must file when designating an individual to serve in their place as provided for under 18 U.S.C. Sections 4351-4353 (1974), (4) to provide for the keeping and recording of the minutes of any meeting of the Board of NIC and upon request for any of the Board's committees, (5) to provide all Board members with notice of the upcoming meetings, the agenda for the meeting, the minutes of the last meeting and any other appropriate materials, (6) to provide the Board through its Grant Review Committee a quarterly report of grant and contract awards.

## ARTICLE IV—MEETINGS

The Board shall meet three times annually. However, when deemed necessary, extra meeting may be called by the chairman or by at least five members of the Board.

Written notice of each meeting of the Board of NIC stating the place, date and

hour of the meeting, shall be given to each member at least three weeks prior to the date of the meeting.

Notice of any special or extra meeting of the Board of NIC called by the chairman or five or more members of the Board shall indicate that it is being issued by or at the direction of the persons calling the meeting and shall state the purpose or purposes for which the meeting is being called. Special or extra meetings may be called at any time with consent of two-thirds of the Board. Notice of a special or extra meeting may be given by telephone and/or by mail and ratified by two-thirds of the Board at the special or extra meeting.

Notice of all meetings of the Board shall be given to the public. Such notice shall be published in the FEDERAL REGISTER at least 15 days prior to the meeting, provided that in emergencies, such requirements may be waived. This notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

Except for executive sessions, meeting of the Board shall be open to the public for observation. The chairman may invite more active participation from the public when such action is appropriate and does not interfere with the orderly transaction of the Board's business.

Executive sessions may be called by a majority vote of a quorum of the Board in public. No final action shall be taken at such meetings except upon votes in open session. These sessions shall not be used to obstruct the fullest possible public accessibility to meetings.

## ARTICLE V—VOTING

All members of, as well as all officers who are members of the Board of NIC shall each be entitled to a vote on any issue before the Board. Proxy voting will be allowed at any meeting of the Board of NIC or at any meeting of its committees or task forces. The proxy must be written and filed with the chairman prior to the voting on the issue in question. Proxies may not be used to form a quorum.

Under 18 U.S.C. section 4351, a member serving ex officio may designate an individual to serve and vote in his position at any meeting of the Board or its committees and task forces. Selection of a designee does not preclude an ex officio member from attending and voting at any meeting of the Board, its committees or task forces in place of his respective designee.

No action of the Board of NIC shall be valid and binding without a vote by a quorum of its members. A quorum of the Board shall consist of one-half or more of its members or designees.

## ARTICLE VI—COMPENSATION OF BOARD MEMBERS

Under 18 U.S.C. sections 4351-4353 (1974), the members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the

Board pursuant to 18 U.S.C. sections 4351-4353 (1974), be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of Title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of Title 5, United States Code for persons in the Government service employed intermittently. Compensation and reimbursement as provided for by this Article shall be made only upon written request.

## ARTICLE VII—PARLIAMENTARY AUTHORITY

Meetings of the Board and its committees shall be conducted in accordance with the rules contained in "Robert's Rules of Order Revised." These rules shall govern the Board in all cases where applicable and in which they are not inconsistent with these bylaws. Special rules of order preempting those contained in "Robert's Rules of Order Revised" may be adopted by the Board. Any special rules of order are to be incorporated in these bylaws as a separate section under this Article.

## ARTICLE VIII—AMENDMENT OF THE BYLAWS

These bylaws may be amended at any meeting of the Board by a majority vote of a quorum of the Board. Amendments to the bylaws may be proposed by the Policy Review Committee or by any five members of the Board of NIC. Any proposed amendments must be written; signed and sent to Board members at least 15 days in advance of the meeting at which they will be discussed.

## ARTICLE IX—NOTICE OF THE BYLAWS

Notice of these bylaws shall be published in the FEDERAL REGISTER.

[FR Doc. 78-36279 Filed 12-28-78; 8:45 am]

[4410-05-M]

## GRANT AND CONTRACT REVIEW PROCESS

### Procedures

Notice is hereby given that the National Institute of Corrections (NIC) has amended its procedures—which were published in the FEDERAL REGISTER Vol. 41, No. 216—Monday, November 8, 1976 at pp. 49200-49201—for the internal processing of concept papers, grant applications and/or contracts. These procedures cover concept papers, grant applications and/or contracts submitted by appropriate individuals, organizations or agencies with NIC's enabling legislation, (18 U.S.C. Sections 4351-4353 (1974)).

ALLEN F. BREED,  
Director,  
National Institute of Corrections.

1. *Purpose.* To formalize the responsibilities of the Advisory Board, Grant Review Committee of the Advisory Board, and the Director of the National Institute of Corrections with regard to grant and contract review and



award. To detail the steps involved in the review and award process.

2. *Directives affected.* Supercedes procedures contained in June 23-24, 1975, National Institute of Corrections Board Minutes. Supplements all official Government regulations.

3. *Definition of terms.* For purposes of this statement, the term "Director" means the Director of the National Institute of Corrections; the term "Advisory Board" means the Advisory Board of the National Institute of Corrections; and the term "Grant Review Committee" means the Grant Review Committee of the Advisory Board, National Institute of Corrections.

An "application" is a duly executed Standard Form 424—Federal Assistance, properly completed in compliance with application instructions and submitted from eligible parties in accordance with Federal Management Circular FMC 74-7 and FMC 73-7.

A "concept paper" is any submission of materials other than the Standard Form 424 which outlines in brief the submitter's programmatic and budgetary intent.

Concept papers and applications for grants originate from three primary sources: Those received in response to announced initiative efforts; those solicited by National Institute of Corrections staff; and those forwarded to the National Institute of Corrections unsolicited.

"Conflict of Interest"—The Department of Justice Standards of Conduct, 28 CFR Part 45.734-4, defining "Conflicts of Interest," apply to "employees" and "special government employees" as defined in this section.

The term "Contract" means establishment of a binding legal relationship basically obligating the seller to furnish personal property or nonpersonal services (i.e., unsupervised delivery of services or a product) and the buyer to pay therefor. It includes all types of commitments which obligate the Government to an expenditure of funds which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and order, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

"Employee" means an officer or employee of the Department of Justice and includes a special Government employee who is an individual retained, designated, appointed, or employed by the Department of Justice to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive

days, temporary duties either on a full-time or intermittent basis.

"Field readers" are those individuals who review NIC selected concept papers and application statements from their professional perspective with the view of assessing the relative merits and feasibility of contemplated actions or activities of the submitter. These individuals appear on the Advisory Board's approved list of readers.

The term "Grant" means an agreement between the Federal Government and another party whereby the Federal Government provides funds or aid in kind to carry out specified programs, services or activities.

4. *Annual Program Plan.* Each year the Director of the National Institute of Corrections shall prepare for the approval of the Advisory Board an Annual Program Plan. This Plan shall outline the program priorities or thrust areas of the Institute, the types of grants and contracts to be undertaken in the next year and their estimated funding levels. The Annual Program Plan may be modified at any duly authorized meeting of the Advisory Board.

The Annual Program Plan shall serve as the framework and guidelines by which concept papers or applications will be reviewed.

5. *Action.* A. Each organization or person submitting a formal application for a grant will be asked to complete a statement of relationship to, association or affiliation with any National Institute of Corrections Advisory Board member and/or staff, past or present.

B. Each concept paper or application will receive a fiscal and programmatic review by the National Institute of Corrections staff. When submissions are deemed nonfundable by staff, a rejection letter stating briefly, the reason for rejection will be forwarded to the organization or person submitting the concept paper or application.

C. Where the concept paper or application is deemed potentially fundable and there is no known conflict of interest the following will apply:

(1) If the grant is within the approved National Institute of Corrections thrust areas, and funding level is: (a) less than \$100,000; or (b) the grant is for the performance of any internal administrative functions of the National Institute of Corrections; or (c) an interagency agreement where another Federal agency is the recipient, the Director will review staff recommendations and make the award decision.

(2) When a concept paper or application is within the approved National Institute of Corrections thrust areas but requested funding level is greater than \$100,000, the Director will obtain at least three field reviews from the

Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections.

The Director will then review staff recommendations and field reviews and make an award decision.

(3) Where a concept paper or application is within the approved National Institute of Corrections thrust areas, but requested funding exceeds \$300,000, the process will proceed as in C-2 above with the exception that the Director will seek the advice of the Grant Review Committee as to the appropriateness of the grant to the Annual Program Plan.

D. Where the concept paper or application is deemed potentially fundable but the statement referred to in 5-A above indicated potential conflict of interest, the considerations outlined in Section C above will apply but in addition there will be:

(1) Fiscal and programmatic review by staff and review by three field readers from the Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections;

(2) Where such reviews are positive, then the Director will seek the advice of the Grant Review Committee regarding the appropriateness of an award and then make an award decision.

E. Each organization or person submitting a concept paper or application will have the right to appeal nonfavorable considerations:

(1) Where concept papers or applications meet guidelines presented in C-1 or C-2 above, the Grant Review Committee will serve as the appellate review board and make recommendations to the Director for appropriate action.

(2) When concept papers or applications meet guidelines contained in C-3 above, the Chairman of the Advisory Board will appoint from the Board an appeals committee to make recommendations to the Director for appropriate action.

F. *Continuation grants.* Any initially approved grant for which a renewal or continuation is requested will be reviewed by NIC program staff. This review will include consideration of any evaluations and reports completed during the term of the grant, NIC's Annual Program Plan, as well as the need for a continued effort in the particular area covered by that particular grant. The reviewing staff will submit a recommendation to the Director. The Director will then make a decision on the continuation of the grant in question.

Appeals to decisions on continuation grants may be made in accordance

with the specifications outlined by Section E above.

6. *Reporting.* The Grant Review Committee will receive quarterly a listing of NIC grant awards. In addition, the Grant Review Committee will be advised quarterly of programmatic contracts entered into by NIC.

[FR Doc. 78-36280 Filed 12-28-78; 8:45 am]

[4510-30-M]

## DEPARTMENT OF LABOR

Employment and Training Administration

### FEDERAL COMMITTEE ON APPRENTICESHIP

#### Public Meetings

Pursuant to Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. 1), of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship will conduct the following open meetings:

(a) Joint Meeting:

FCA Subcommittees on Goals and Equal Apprenticeship Opportunity

Date: January 17, 1979.

Time: 9 a.m. to 11 a.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: 1. Followup on Recommendations of the Toledo Bend Meeting.

2. Rewording of Section I, 3 (b) concerning 1-year exemption from application of 29 CFR 30 to stimulate development of new apprenticeship programs.

(b) FCA Subcommittee on Research:

Date: January 17, 1979.

Time: 11 a.m. to 12 noon.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Discussion of the ETA Research and Evaluation Process.

(c) FCA Subcommittee on Goals:

Date: January 17, 1979.

Time: 1:30 p.m. to 2:30 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Recommendations of the Toledo Bend Meeting.

(d) FCA Subcommittee on Equal Apprenticeship Opportunity:

Date: January 17, 1979.

Time: 2:30 p.m. to 3:30 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: (a) Hotline for Telephone Exchange of Apprenticeship Information.

(b) Women's Issues.

(e) FCA Subcommittee on Federal-State Relations:

Date: January 17, 1979.

Time: 4 p.m. to 6 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Discussion of the University of Texas Study of Federal-State Rules and Responsibilities.

The Federal Committee on Apprenticeship will hold a full open meeting on Thursday, January 18, from 9 a.m. to 4:30 p.m.; Friday, January 19, 1979, from 9 a.m. to 12 noon in the Congressional Room, Quality Inn-Capitol Hill, 415 New Jersey Avenue, N.W., Washington, D.C.

The agenda for the meeting on January 18 will include:

1. Department of Labor Task Force to Study Foreign Apprenticeship Programs

2. American Vocational Association

3. Performance Evaluated Training System (United Brotherhood of Carpenters and Joiners)

4. Slide Presentation—"Women in Apprenticeship"

5. Report on Implementation of 29 CFR 30: Equal Employment Opportunity in Apprenticeship and Training

6. Goodyear Performance Based Training

7. William F. Patterson Memorial Fund

8. Status Report on New Initiatives and Other BAT Activities

9. Status Report on Apprenticeship Information Centers Program

10. Report of FCA Subcommittee on Research

The agenda for the meeting on January 19 will cover:

1. Slide Presentation on "BAT Apprenticeship"

2. Tennessee-Tombigbee Rural Employment Outreach E&D Project

3. Report of FCA Subcommittee on Federal-State Relations

4. Report of FCA Subcommittee on Goals of the FCA

Agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary before January 15, 1979. Thirty copies are needed for the members and for the inclusion of the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in a written statement, also the nature of the intended presentation and amount of time needed. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows: Mrs. Marion M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, N.W., (room 5434), Washington, D.C. 20213.

Signed at Washington, D.C. this 26th day of December 1978.

ERNEST G. GREEN,  
Assistant Secretary for Employment and Training Administration.

[FR Doc. 78-36324 Filed 12-28-78; 8:45 am]

[4510-43-M]

### Mine Safety and Health Administration

[Docket No. M-78-122-C]

#### AMERICAN COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

American Coal Company, Box 310, Huntington, Utah 84528, has filed a petition to modify the application of 30 CFR 77.410 (automatic warning devices) to its Deseret, Bee-Hive and Little Dove Mines located in Emery County, Utah. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-194.

The substance of the petition follows:

(1) The petition pertains to Kubotas and Ford 1600 diesel utility tractors used in the mines for underground travel does not pertain to equipment used for hauling material or pulling man-trip cages.

(2) Maintenance of automatic warning devices that indicate movement in reverse has proven difficult because of the adverse conditions underground where the tractors are used most of the time.

(3) These tractors travel a maximum of four miles per hour in reverse.

(4) Because an operator can look over either shoulder with unobstructed view, the petitioner believes that the tractors do not need warning devices for movement in reverse.

#### REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before January 29, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.



Dated: December 12, 1978.

ROBERT B. LAGATHER,  
Assistant Secretary  
for Mine Safety and Health.  
[FR Doc. 36142 Filed 12-28-78; 8:45 am]

**[4510-43-M]**

Mine Safety and Health Administration

[Docket No. M-78-301]

MORATA COAL CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that the Mine Safety and Health Administration (MSHA) has granted in part the petition (43 FR 8192) of Morata Coal Company to modify the application of 30 CFR 75.301 to its No. 4 Vein Slope Mine in Northumberland County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164. It has been determined that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard.

This determination was based on the following findings made by MSHA:

1. The quantity of air in the working faces and in the last open crosscut was found to be in excess of the minimum requirements of 30 CFR 75.301.

2. Ventilation violation records revealed that the mine was not always in compliance with respect to the air quantity requirement in the face area. However, a hazardous condition due to methane, carbon dioxide, and other noxious or poisonous gases was not detected in the mine during the period of non-compliance.

3. Air sample analyses records and frequent onsite sampling confirm that harmful quantities of methane have not been detected in this mine.

4. The operator's records, as well as MSHA's, confirm that there were no ignitions, explosions, or mine fires in this mine since activation of the mine.

5. Air sample analyses records and frequent onsite sampling indicate that harmful quantities of carbon dioxide and other noxious or poisonous gases are not present in this mine.

6. Respirable dust was not found to be in excess of the maximum standards as verified by dust sample records, which revealed an average concentration of 0.13 mg/m<sup>3</sup>, which was well below the present maximum limit standard of 2.0 mg/m<sup>3</sup>. A high of 1.9 milligrams was recorded on an operator cycle of ten samples collected when the maximum was 20 milligrams. As regards dust concentrations in anthracite mines, we point out that re-

spirable dust data collected when a representative mine was regulated to simulate conditions with air quantities requested for this mine, revealed that there was no appreciable increase in dust concentrations with these smaller air quantities.

7. The operator contends that extremely high air velocities in restricted airways and manways present a very dangerous flying object hazard to the miners. Investigation has revealed that these conditions do not exist in this mine, consequently, we do not agree that this is a problem in the mine.

8. The operator argues that high velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable cold mine. This investigation tends to substantiate this claim even though the investigation was conducted during the warmer months. The mine is wet, consequently, a damp atmosphere is ever present. This dampness coupled with the cold air induced into the mine during the winter months creates an unbearable damp, cold working environment. The induced cold surface air does not have a chance to adjust substantially upwards due to the fact that the mine is shallow and small, and air travel distance and time required to deliver the air to the working area is short.

9. Interview with the miners also substantiated petitioner's claim that the mine conditions caused in part by compliance with 30 CFR 75.301 contribute to difficulty in attracting and retaining mine employees.

10. MSHA investigators also found there was no electric face equipment or other electrically operated mechanical mining equipment used in this mine, thus further minimizing any need for the quantities of air required by 30 CFR 75.301.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the following:

That Section 75.301 of the implementing regulations, 30 CFR 75, be modified for the Morata Coal Company, No. 4 Vein Slope Mine, to require in part, the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful atmosphere.

A copy of the decision is available for inspection by the public at the

Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 14, 1978.

ROBERT B. LAGATHER,  
Assistant Secretary  
for Mine Safety and Health.  
[FR Doc. 78-36143 Filed 12-28-78; 8:45 am]

**[4510-43-M]**

[Docket No. M-78-124-C]

MULLINS AND SONS COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Mullins and Sons Coal Co, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies) to its No. 1 Mine, in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition pertains to the following equipment: 1 Joy 16 RB cutting machine, 2 Galis roof bolters, 1 Wilcox roof bolter, 5 Elkhorn battery scoops and 1 Long Airdox face drill.

2. This equipment ranges in height from 24 to 36 inches and was not designed to have canopies installed.

3. The petitioner is mining at face heights of 45 to 48 inches, but to reach the face the petitioner's equipment must pass under roof heights of less than 42 inches.

4. Because the floor of the mine is uneven, canopies on the petitioner's equipment would hit and loosen roof bolts, causing a hazard.

5. Canopies would limit the equipment operator's field of vision, creating a potential hazard.

6. For these reasons, the petitioner states that the application of the standard to the mine will result in a diminution of safety to the miners of the mine.

**REQUEST FOR COMMENTS**

Persons interested in this petition may furnish written comments on or before January 29, 1979. Comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 18, 1978.

ROBERT B. LAGATHER,  
Assistant Secretary  
for Mine Safety and Health.  
[FR Doc. 78-36144 Filed 12-28-78; 8:45 am]

**[4510-43-M]**

[Docket No. M-77-259]

QUARTO MINING CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted the petition (42 FR 54885) of Quarto Mining Company to modify the application of 30 CFR 75.1700 to its Powhatan No. 4 Mine located in Monroe County, Ohio, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection afforded miners of the mine by the standard.

MSHA based its determination on the following findings:

Extensive research conducted by the U.S. Bureau of Mines and U.S. Energy Research and Development Administration (ERDA) has developed feasible and safe methods to plug abandoned oil/gas wells and eliminate the need for coal barriers around such wells. MESA Informational Report 1052 has concluded that certain plugging methods can effectively prevent well gases from entering the mine during regular mining operations and allow additional safety and operational benefits that are not possible under 75.1700.

MSHA's investigators and Chief, Safety Division recommended that the Petition for Modification of the application of Section 75.1700, Docket No. M-77-259 be approved as providing no less than the same degree of safety that Section 75.1700 does, if the following stipulations are adopted in the petition:

1. The procedures for plugging the wells and the safety precautions included in their Petition for Modification (30 CFR, subsection 75.1700) and this report shall be complied with.

2. Prior to plugging operations, the Petitioner shall file mining projections for the well to be plugged with MSHA so that a determination can be made as to whether the mining through of that well is necessary.

3. The Quarto Mining Company shall consult and cooperate with MSHA in plugging and mining in the 300-foot area around the well so that the technical expertise of the project will be available to MSHA.

4. The following procedures shall apply for longwall mining through a plugged well:

(a) Fire-fighting facilities to include fire extinguishers, rock-dust, and enough fire hose to reach the working place, shall be available.

(b) Equipment shall be checked for permissibility and serviced on the shift prior to mining through the well.

(c) The methane monitor on the longwall shall be calibrated and tested on the shift prior to mining through the well.

(d) Tests for methane will be made with a hand-held methane detector at least every ten (10) minutes from the time that mining is within 30 feet from the well until the well is intersected.

(e) The area shall be free from accumulations of coal dust and coal spillages, and rockdust shall be placed on the roof, ribs, and floor before the last shear cuts into the well.

5. The following procedures shall apply for the mining through of plugged wells with a continuous miner:

(a) Drivage sights shall be installed at the last breakthrough to assure intersection of the well and again if necessary to insure that the last sight line is no further than fifty feet from the well.

(b) Sufficient supplies of roof support and ventilation materials shall be available near the working place.

(c) Fire-fighting facilities to include fire extinguishers, rockdust, and enough fire hose to reach the working place shall be available.

(d) A minimum of 9,000 cubic feet of air per minute shall be used to ventilate the working face during the mining through.

(e) Equipment shall be checked for permissibility and serviced on the shift prior to the mining-through.

(f) The area shall be free from accumulations of coal dust and coal spillages and rockdust shall be maintained on the roof, rib and floor to within twenty feet of the face.

6. When the well bore is intersected, all equipment shall be idled, deenergized and the place thoroughly examined and determined safe before mining is resumed. Any well casing shall be removed, and no open flame shall be permitted in the area until adequate ventilation has been established around the well bore.

7. Air samples shall be collected by MSHA personnel at the well bore following the mining-through and at other intervals as determined by MSHA.

8. After the well has been intersected and the working place determined safe, mining will continue in by the well a sufficient distance to permit adequate ventilation around the area of the well bore.

9. The mining-through operation shall be under the direct supervision of a certified official. Orders concerning the mining through operation shall be issued by the certified official in charge.

10. MSHA personnel may interrupt or halt the mining-through operation when it is necessary to insure the safety of the miners.

11. No person shall be permitted in the area of the mining through operation except those actually engaged in the operation, company personnel, representatives of the United Mine Workers of America, personnel from MSHA, and personnel from the Ohio Department of Mines.

12. A copy of the petition shall be maintained at the mine and be available to the miners.

13. Petitioner will notify MSHA prior to mining within 300 feet of the well.

14. The District Manager or Subdistrict Manager, MSHA, will conduct a conference just prior to, or within a reasonable time prior to, the mining-through of any plugged well, to review the specific plan for mining-through such well, and determine whether or not such plan is appropriate. Representatives of the operator, UMWA, and the State Department of Mines will be informed, within a reasonable time prior to the conference, and will be given an opportunity to attend and participate.

15. Krypton 85 can be used as an alternative tracer in plugging of oil or gas wells.

16. The MSHA District or Subdistrict Manager and representatives of the United Mine Workers of America (including the Chairman of the Mine Safety and Health Committee and the International Safety Inspector) shall be notified in sufficient time prior to the mining-through to have representatives present during the actual mining-through operation. Employees at the mine will be notified by mine management as to what is scheduled to take place.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the terms and conditions of the findings.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 15, 1978.

ROBERT B. LAGATHER,  
Assistant Secretary  
for Mine Safety and Health.  
[FR Doc. 78-36145 Filed 12-28-78; 8:45 am]



[4510-28-M]

## Office of the Secretary

## BOLTS, NUTS, AND LARGE SCREWS OF IRON OR STEEL

## Notice of Report Findings and Availability

On November 3, 1978, the U.S. International Trade Commission (ITC) determined that increased imports of "Bolts, Nuts, and Large Screws of Iron or Steel" are a substantial cause of serious injury, or the threat thereof, to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (43 FR 52294).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on "Bolts, Nuts, and Large Screws of Iron or Steel". The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the U.S. Department of Labor has received 40 petitions for certification of eligibility to apply for adjustment assistance from workers engaged in the production of bolts, nuts, and large screws of iron or steel. The Department certified 20 of these cases and 17 were denied. One petition was withdrawn by the petitioner prior to an investigation, and two investigations are in progress. As of August 31, 1978 the Department had paid \$6,998,017 in the form of trade readjustment allowances to 4,702 workers.

2. Employment of workers producing bolts, nuts, and large screws of iron or steel was slightly higher in the first half of 1978 than in 1976, but remained substantially below the levels reached in 1973 and 1974. Employ-

ment, man-hours, and hours worked per week have been essentially constant over the last two years. However, demand for labor in the industry is very unlikely to increase, and some erosion of employment is possible during 1979, depending on economic conditions and potential import increases. Most separated workers should be eligible for trade adjustment assistance.

3. Unemployment rates in eleven of the 25 areas with plants producing bolts, nuts, and large screws of iron or steel were above the national unemployment rate of 5.8 percent (unadjusted) for August 1978. Unfavorable local labor market conditions, especially for those areas having several plants, indicate that reemployment prospects for many of the separated workers in impacted areas are generally unfavorable.

4. The age distribution of workers in the bolts, nuts, and large screws of iron or steel industry indicate that these workers are substantially older than clients targeted by CETA sponsors for impacted areas. The Comprehensive Employment and Training Act (CETA) sponsors appear to have sufficient funding, positions, or both for those displaced workers who qualify. For displaced trade impacted workers not covered by CETA programs, the U.S. Department of Labor has the authority, within funding limitations, to purchase specific training.

Copies of the Department report containing nonconfidential information developed in the course of the 3-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (phone 202-523-7665).

Signed at Washington, D.C. this 19th day of December 1978.

HOWARD D. SAMUEL,  
Deputy Under Secretary,  
International Affairs.

[FR Doc. 78-36146 Filed 12-28-78; 8:45 am]

[4510-28-M]

## INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section

221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1978.

MARVIN M. FOOKS,  
Director, Office of  
Trade Adjustment Assistance.

## APPENDIX

| Petitioner (Union/workers or former workers of)—                       | Location                | Date received | Date of petition | Petition No. | Articles produced                                                                  |
|------------------------------------------------------------------------|-------------------------|---------------|------------------|--------------|------------------------------------------------------------------------------------|
| Leemar Knitting Mills, Inc./Winmore Knitting Mills, Ltd. (company).    | Long Island, City, N.Y. | Dec. 11, 1978 | Dec. 5, 1978     | TA-W-4,531   | Woven ladies' and men's wear.                                                      |
| Marion Harwood Manufacturing Co., Marion Plant (workers).              | Marion, Va.             | do            | Dec. 7, 1978     | TA-W-4,532   | Men's and boys' and some infants pajamas.                                          |
| Marion Harwood Manufacturing Co., Holston Plant (workers).             | Marion, Va.             | do            | do               | TA-W-4,533   | Men's pajamas and robes.                                                           |
| Marion Harwood Manufacturing Co., Abingdon Plant (workers).            | Abingdon, Va.           | do            | do               | TA-W-4,534   | Men's pajamas, and some boy's, and men's under shorts and sport shorts.            |
| Robinson Manufacturing Co. (company).                                  | Robinson, Ill.          | do            | Dec. 6, 1978     | TA-W-4,535   | Children and growing girls' shoes.                                                 |
| Saco Tanning Corp. (company).                                          | Saco, Maine             | do            | Dec. 4, 1978     | TA-W-4,536   | Tanning of hide leather for shoes and garments.                                    |
| Valley Knitting Mills, Inc. (workers).                                 | Haskell, N.J.           | do            | Dec. 7, 1978     | TA-W-4,537   | Women's sweaters.                                                                  |
| Casey Manufacturing Co. (company).                                     | Casey, Ill.             | do            | Dec. 5, 1978     | TA-W-4,524   | Shoes for boys' and young men.                                                     |
| Cooper Alloy Corp. (International Modifiers and Allied Workers Union). | Hillsdale, N.J.         | Dec. 14, 1978 | Dec. 14, 1978    | TA-W-4,525   | Casting and foundry work.                                                          |
| Etzelbrick Shoe Co. (company).                                         | Greenup, Ill.           | Dec. 11, 1978 | Dec. 6, 1978     | TA-W-4,526   | Warehousing of finished shoes, raw materials and shipment to the customers.        |
| F. W. Fischer Co., Inc. (workers).                                     | New York, N.Y.          | do            | Dec. 7, 1978     | TA-W-4,527   | Children's coats and preteen's.                                                    |
| Florsheim Shoe Co. (United Shoe Workers of America).                   | Cape Girardeau, Mo.     | Dec. 13, 1978 | Dec. 11, 1978    | TA-W-4,528   | Men's footwear.                                                                    |
| Greenup Manufacturing Co. (company).                                   | Greenup, Ill.           | Dec. 11, 1978 | Dec. 5, 1978     | TA-W-4,529   | Children, growing girls and boys' shoes.                                           |
| Kawachi Beryloco Industries, Zirtech Division (USWA).                  | Albany, Oreg.           | do            | Dec. 6, 1978     | TA-W-4,530   | Tubing for airline and aerospace industries titanium, zirconium, copper beryllium. |

[FR Doc. 78-36147 Filed 12-28-78; 8:45 am]

## INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or pro-

duction, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number of proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment As-

sistance, at the address shown below, not later than January 8, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of December 1978.

MARVIN M. FOOKS,  
Director, Office of  
Trade Adjustment Assistance.

## APPENDIX

| Petitioner (Union/workers or former workers of)—                           | Location            | Date received | Date of petition | Petition No. | Articles produced                                                                                           |
|----------------------------------------------------------------------------|---------------------|---------------|------------------|--------------|-------------------------------------------------------------------------------------------------------------|
| Aberdeen Sportswear (ACTWU).                                               | Belmar, N.J.        | Dec. 14, 1978 | Dec. 12, 1978    | TA-W-4,538   | Cloth outerwear for men.                                                                                    |
| Almet Distribution Co., Inc. (company).                                    | Los Angeles, Calif. | Dec. 18, 1978 | Dec. 14, 1978    | TA-W-4,539   | Partial assembly, testing packaging, sales and distribution of sewing machines and sewing machine cabinets. |
| Bergen Knitting Mills, Inc. (workers).                                     | Union City, N.J.    | do            | do               | TA-W-4,540   | Men's, children's and ladies' sweaters.                                                                     |
| Master Corp. of Texas (workers).                                           | Abilene, Tex.       | Dec. 14, 1978 | Dec. 11, 1978    | TA-W-4,541   | Presto deep fryers and pop corn poppers.                                                                    |
| North American Refractories Co. (USWA).                                    | Mt. Union, Pa.      | do            | Nov. 15, 1978    | TA-W-4,542   | Refractories and silica refractories brick.                                                                 |
| Roberts Consolidated Industries (United Paperworkers International Union). | Piqua, Ohio         | do            | Nov. 30, 1978    | TA-W-4,543   | Carpet tact strip.                                                                                          |
| Taunton Dress, Inc. (workers).                                             | Taunton, Mass.      | Dec. 15, 1978 | Dec. 15, 1978    | TA-W-4,544   | Contractor of ladies' pantsuits, blouses and dress.                                                         |

[FR Doc. 78-36148 Filed 12-28-78; 8:45 am]



[4510-28-M]

(TA-W-4084)

AVONDALE MILLS EVA JANE PLANT,  
SYLACAUGA, ALA.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4084: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 22, 1978 in response to a worker petition received on August 18, 1978 which was filed on behalf of workers and former workers producing polyester/cotton blend fabrics at the Eva Jane Plant of Avondale Mills in Sylacauga, Alabama.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39458). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Avondale Mills, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department of Labor conducted a survey of some of the customers of Avondale Mills, Eva Jane Plant. None of the customers responding purchased imported polyester/cotton blend fabric between 1976 and July 1978.

**Conclusion**

After careful review, I determine that all workers of the Eva Jane Plant of Avondale Mills in Sylacauga, Alabama, are denied eligibility to apply for adjustment assistance under Title

II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-36149 Filed 12-28-78; 8:45 am]

[4510-28-M]

(TA-W-4057)

BELROSE KNITTING MILLS, HOBOKEN, N.J.

**Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4057: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 15, 1978 in response to a worker petition received on August 14, 1978 which was filed on behalf of workers and former workers producing men's, women's and children's sweaters at Belrose Knitting Mills, Hoboken, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635-36). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Belrose Knitting Mills, its customers (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the customers of Belrose Knitting Mills representing a majority of sales.

The survey revealed that respondents did not purchase imported sweaters or use foreign contractors.

**Conclusion**

After careful review, I determine that all workers of Belrose Knitting Mills, Hoboken, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-36150 Filed 12-28-78; 8:45 am]

[4510-28-M]

(TA-W-4164)

BENDIX CORP. ABRASIVES DIVISION,  
JACKSON, MICH. PLANT

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4164: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 19, 1978 in response to a worker petition received on September 15, 1978 which was filed by the United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of workers and former workers producing abrasive grinding wheels at the Jackson, Michigan plant of the Bendix Corporation, Abrasives Division.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50270). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Bendix Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Bendix Corporation Abrasives Division intends to close the Jackson, Michigan plant in January 1979. Production facilities at the Jackson plant will be moved to North Manchester, Indiana. Employment at the Jackson plant is on the decline, while divisional employment and divisional sales of grinding wheels are currently increasing.

**Conclusion**

After careful review, I determine that all workers of the Jackson, Michigan plant of the Bendix Corporation Abrasives Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
[FR Doc. 78-36151 Filed 12-28-78; 8:45 am]

[4510-28-M]

(TA-W-4276)

SAUCON MILLS, BETHLEHEM STEEL CORP.,  
BETHLEHEM, PA.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4276: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 10, 1978 which was filed on behalf of workers and former workers involved with scheduling production operations at the Saucun Mills of Bethlehem Steel Corporation, Bethlehem, Pennsylvania. The investigation revealed that the plant primarily produces carbon steel structural shapes. Pursuant to an earlier investigation (TA-W-1496), workers were certified as eligible to apply for adjustment assistance. A termination date of January 1, 1977 was imposed. A subsequent investigation was conducted (TA-W-3729, 3730, and 3731) to determine if the January 1, 1977 termination date could be extended. A negative determination was issued on October 16, 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-9). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bethlehem Steel Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

... that sales or production, or both, of the firm or subdivision have decreased absolutely ...

Sales and production at the Saucun Mills increased in 1977 compared with 1976 and continued to increase in the first ten months of 1978 compared with the like period in 1977.

**Conclusion**

After careful review, I determine that all workers of the Saucun Mills of the Bethlehem Steel Corporation, Bethlehem, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December, 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
[FR Doc. 78-36152 Filed 12-28-78; 8:45 am]

[4510-28-M]

(TA-W-4237)

BOAT ANTHONY AND JOSEPHINE, INC.,  
GLOUCESTER, MASS.

**Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4237: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 4, 1978 in response to a worker petition received on October 3, 1978 which was filed on behalf of workers and former workers catching and selling fish for Anthony and Josephine, Gloucester, Massachusetts. The investigation revealed that the compa-

ny name is Boat Anthony and Josephine, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060-61). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Boat Anthony and Josephine, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S imports of groundfish decreased in quantity from 755,538 thousand pounds in 1976 to 736,302 thousand pounds in 1977 and decreased from 349,115 thousand pounds in the first six months of 1977 to 346,559 thousand pounds in the first six months of 1978. The ratio of imports to domestic production decreased from 191.0 percent in 1976 to 167.8 percent in 1977 and decreased from 159.1 percent in the first half of 1977 to 146.3 percent in the first half of 1978.

Commercial landings of groundfish at Gloucester, Massachusetts increased from 46,672 thousand pounds in 1976 to 70,453 thousand pounds in 1977 and from 36,483 thousand pounds in the first six months of 1977 to 44,075 thousand pounds in the first six months of 1978.

On March 30, 1977, the Fisheries Conservation Zone (FCZ), which limits domestic and foreign catches within 200 miles of the boundaries was established. Domestic landings of cod, haddock and yellowtail flounder were restricted and no foreign fishing of these species is permitted. Since the institution of FCZ, total imports of groundfish have declined.

**Conclusion**

After careful review, I determine that all workers of Boat Anthony and Josephine, Inc., Gloucester, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.



Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
[FR Doc. 78-36153 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4308]

CAROL LEE FASHIONS, SANTA MONICA,  
CALIF.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4308: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 26, 1978 which was filed by the International Ladies' Garment Worker's Union on behalf of workers and former workers producing women's coats, suits and jackets at Carol Lee Fashions, Santa Monica, California. The investigation revealed that suits are not produced.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51866). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Carol Lee Fashions, the U.S. Department of Commerce, The National Cotton Council of America, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

As a contractor Carol Lee Fashions sales equal its production. Sales at Carol Lee Fashions remained unchanged from 1976 to 1977 and increased in the first ten months of 1978 compared to 1977. Sales increased in four consecutive quarters from the fourth quarter of 1977 through the third quarter of 1978 when compared to the same quarter of the previous year.

**Conclusion**

After careful review, I determine that all workers of Carol Lee Fashions, Santa Monica, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research  
[FR Doc. 78-36154 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4221]

COLUMBIA BELT AND NOVELTIES, INC.,  
BOSTON, MASS.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4221: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 27, 1978 which was filed on behalf of workers and former workers producing belts at Columbia Belt and Novelities, Incorporated, Boston, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 44795). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Columbia Belt and Novelities, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Columbia Belt and Novelities sells its belts to garment manufacturers who then market them as a part of the garment. A Department survey of the major garment manufacturers to

whom Columbia Belt sold its product revealed that none of these manufacturers purchased any imported belts in 1976, 1977 or in the first three quarters of 1978.

**Conclusion**

After careful review, I determine that all workers of Columbia Belt and Novelities, Incorporated, Boston, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
[FR Doc. 78-36155 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4365]

CONTINENTAL GROUP, INC. PATERSON, N.J.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4365: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 8, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing articles needed for packaging: steel cans, boxes, drums, etc. at the Continental Group, Paterson, New Jersey. The investigation revealed that the plant primarily produces steel cans.

A previous petition (TA-W-2389) was filed on behalf of workers producing articles needed for packaging: steel cans, boxes, drums, etc. at the Continental Group, Paterson, New Jersey on September 19, 1977. The Department of Labor on December 29, 1977 issued a Notice of Negative Determination to those workers.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-13). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Continental Group, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of all metal cans have been negligible. Imports of metal cans have been less than .04 percent of U.S. production annually from 1973 through 1977. In 1976 and 1977 imports were .01 percent of U.S. production.

The petitioners allege that increased imports of steel have contributed importantly to separations at Continental Group, Paterson, New Jersey. Imports of steel cannot be considered to be like or directly competitive with steel cans.

**Conclusion**

After careful review, I determine that all workers of the Continental Group, Incorporated, Paterson, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December, 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
[FR Doc. 78-36156 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3887]

CROWN ZELLERBACH CORP., BOGALUSA, LA.

**Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3887: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 22, 1978 in response to a worker petition received on June 21, 1978 which was filed by the United Paper Workers' International Union on behalf of workers and former workers producing corrugated boxes, multi-wall bags and grocery bags at the Bogalusa, Louisiana plant of Crown Zellerbach Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29365-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Crown Zellerbach Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege injury due to imports of boxes, bags and converting machinery which is used to produce boxes and bags. Converting machinery can not be considered like and directly competitive with boxes and bags, which are the products produced and sold by the subject plant. Imports of boxes and bags must be considered in determining import injury to workers producing boxes and bags.

The department's investigation revealed that U.S. imports or corrugated boxes, multi-wall bags and grocery bags are negligible. The ratio of imports to domestic production from 1973 through 1977 was less than .10 percent for corrugated boxes, .20 percent or less for multi-wall bags and .24 percent or less for grocery bags.

**Conclusion**

After careful review, I determine that all workers engaged in employment related to the production of boxes, multi-wall bags, and grocery bags at the Bogalusa, Louisiana plant of Crown Zellerbach Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
[FR Doc. 78-36157 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4185]

E&W OF MANILA, INC., MANILA, ARK.

**Certification Regarding Eligibility to Apply for  
Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4185: investigation regarding

certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 15, 1978 which was filed on behalf of workers and former workers producing blue jeans, fatigues, painters jeans and different types of work pants at E&W of Manila, Inc., Manila, Arkansas. The investigation revealed that the plant primarily produces blue jeans.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of E&W of Manila, its customers, (manufacturers), The National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

The Department conducted a survey of the manufacturer who purchased jeans from E&W of Manila. The survey showed that the manufacturer who accounted for all of E&W of Manila's sales increased imports from 1977 to 1978. It was learned that the manufacturer (parent company) of E&W, in order to maintain their place in the market, had to increase imports as it was no longer profitable to produce at E&W of Manila. This plant was closed permanently in April 1978.

U.S. imports of jeans and dungarees increased both absolutely and relative to domestic shipments in 1977 compared to 1976 and declined in the first half of 1978 compared to the first half of 1977.

**Conclusion**

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the blue jeans, fatigues, painters jeans and different types of work pants produced at E&W of Manila, Inc., Manila, Arkansas contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification: "All workers of E&W of Manila, Inc., Manila, Arkansas engaged in employment related to the production of blue jeans, fatigues, painters jeans and different type of work pants who became totally or partially separated from employ-



ment on or after September 6, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,

Acting Director, Office of  
Foreign Economic Research.

(FR Doc. 78-36158 Filed 12-28-78; 8:45 am)

#### [4510-28-M]

(TA-W-4166-4168 and TA-W-4171-4181 and  
TA-W-4330-4347)

#### GENESCO, INC., FOOTWEAR SECTOR, NASHVILLE, TENN.

#### Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4166 through 4168, 4171 through 4181, 4330 through 4347: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations for TA-W-4166 through 4168 and 4171 through 4181 were initiated on September 19, 1978 in response to worker petitions received on September 13, 1978, which were filed on behalf of workers and former workers engaged in employment related to the production of men's, women's and children's shoes of the General Shoe Company Division of Genesco, Incorporated. The name of the Division has been changed to Footwear Sector.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50270). No public hearing was requested and none was held.

The investigations for TA-W-4330 through 4347 were initiated on November 6, 1978 in response to worker petitions received on November 2, 1978 which were filed on behalf of workers and former workers engaged in employment related to the production of men's, women's and children's shoes of the General Shoe Company Division of Genesco, Incorporated. The name of the Division has since been changed to Footwear Sector.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53851-52). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Footwear Sector of Genesco, Incorporated, its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International

Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's, youths', and boys' dress and casual footwear, except athletic, decreased from 1976 to 1977. However, the ratio of imports to domestic production increased from 1976 to 1977. Imports decreased in the first six months of 1978 compared to the first six months of 1977. The ratio of imports to domestic production decreased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of women's and misses' nonrubber footwear, except athletic, decreased from 1976 to 1977. However, the ratio of imports to domestic production increased from 1976 to 1977. Imports increased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of athletic footwear increased from 1976 to 1977. The ratio of imports to domestic production increased from 1976 to 1977. Imports decreased in the first six months of 1978 compared to the first six months of 1977.

Company imports of footwear decreased in 1977 compared to 1976 and then increased in the first nine

months of 1978 compared to the first nine months of 1977.

A Department survey of Genesco's customers indicated an increasing reliance on imported footwear by respondents. Some respondents indicated that they had increased their purchases of imported footwear while decreasing their purchases from Genesco.

These findings are consistent with industry trends, which show that imports have gained an increased share of the nonrubber footwear market in recent years. The ratio of imports to domestic production for nonrubber footwear has increased each year from 58.6 percent in 1974 to 94.4 percent in 1977.

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's footwear produced at the Footwear Sector of Genesco, Incorporated contributed importantly to the decline in sales of production and to the total or partial separation of workers of each of the petitioning plants. In accordance with the provisions of the Act, I make the following certification: "All workers of the plants listed below who became totally or partially separated from employment on or after the corresponding date listed below are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

|           | Plant                                                                                                 | Impact Date     |
|-----------|-------------------------------------------------------------------------------------------------------|-----------------|
| TA-W-4166 | Carthage, Tenn.                                                                                       | Sept. 11, 1977. |
| TA-W-4167 | Smithville, Tenn.                                                                                     | Do.             |
| TA-W-4168 | McMinnville, Tenn.                                                                                    | Do.             |
| TA-W-4171 | Gallatin, Tenn.                                                                                       | Do.             |
| TA-W-4172 | Lewisburg, Tenn.                                                                                      | Do.             |
| TA-W-4173 | Pulaski, Tenn.                                                                                        | Jan. 11, 1978.  |
| TA-W-4174 | Chapel Hill Terminal, Chapel Hill, Tenn.                                                              | Nov. 16, 1977.  |
| TA-W-4175 | Payetteville Terminal, Payetteville, Tenn.                                                            | Sept. 11, 1977. |
| TA-W-4176 | Waynesboro, Tenn.                                                                                     | Do.             |
| TA-W-4177 | Hohenwald, Tenn.                                                                                      | Do.             |
| TA-W-4178 | Centerville, Tenn.                                                                                    | Do.             |
| TA-W-4179 | Camden, Tenn.                                                                                         | Jan. 25, 1978.  |
| TA-W-4180 | Footwear Sector Headquarters, Genesco Park, Nashville, Tenn.,<br>111 Seventh Avenue, Nashville, Tenn. | Dec. 28, 1978.  |
| TA-W-4181 | J. & M. Shoe Plant, Nashville, Tenn.                                                                  | June 7, 1978.   |
| TA-W-4330 | Danville Plant, Danville, Ky.                                                                         | Oct. 30, 1977.  |
| TA-W-4331 | Pulten, Miss.                                                                                         | Do.             |
| TA-W-4332 | Iuka, Miss.                                                                                           | Do.             |
| TA-W-4333 | Ripley, Miss.                                                                                         | Do.             |
| TA-W-4334 | 56th Avenue Rubber Mill, Nashville, Tenn.                                                             | Aug. 16, 1978.  |
| TA-W-4335 | Chapel Hill Sole Cutting, Chapel Hill, Tenn.                                                          | July 12, 1978.  |
| TA-W-4336 | General Adhesives and Chemicals Co., Nashville, Tenn.                                                 | Aug. 16, 1978.  |
| TA-W-4337 | Southern Sole, Nashville, Tenn.                                                                       | Sept. 13, 1978. |
| TA-W-4338 | Tullahoma Capitol Products, Tullahoma, Tenn.                                                          | Feb. 25, 1978.  |
| TA-W-4339 | Dominion Shoe Co. Terminal, Charlotte, N.C.                                                           | July 12, 1978.  |
| TA-W-4340 | Fulton Terminal, Fulton, Miss.                                                                        | Jan. 18, 1978.  |
| TA-W-4341 | Genstar Terminal, Nashville, Tenn.                                                                    | Oct. 30, 1977.  |
| TA-W-4342 | Huntsville Terminal, Huntsville, Ala.                                                                 | Do.             |
| TA-W-4343 | J. & M. Terminal, Nashville, Tenn.                                                                    | Aug. 2, 1978.   |
| TA-W-4344 | Customer Service Terminal, Nashville, Tenn.                                                           | Oct. 30, 1977.  |
| TA-W-4345 | Payetteville Terminal, MMD, Payetteville, Tenn.                                                       | Apr. 19, 1978.  |
| TA-W-4346 | 63rd Avenue Terminal, MMD, Nashville, Tenn.                                                           | May 10, 1978.   |
| TA-W-4347 | Main Street General, Maintenance, Nashville, Tenn.                                                    | Oct. 30, 1977.  |

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

(FR Doc. 78-36159 Filed 12-28-78; 8:45 am)

#### [4510-28-M]

(TA-W-4204)

#### GRAMERCY MILLS, INC., PASSAIC, N.J.

#### Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4204: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 21, 1978 in response to a worker petition received on September 18, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing girls' bathing suits. The investigation revealed that Gramercy Mills also produces girls' sundresses.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Gramercy Mills, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, girls' and infants swimsuits increased from 486 thousand dozen in 1975 to 780 thousand dozen in 1976 and to 823 thousand dozen in 1977. Imports increased from 585 thousand dozen in the first three quarters of 1977 to 708 thousand dozen in the same period of 1978. The ratio of imports to domestic production of swimsuits increased from 20.7 percent in 1975 to 30.1 percent in 1976 and to 35.3 percent in 1977.

U.S. imports of children's dresses increased from 552 thousand dozen in the first three quarters of 1977 to 708 thousand dozen in the same period of 1978.

Gramercy Mills, Incorporated increased its company imports of girls' bathing suits by 111.2 percent in quantity and by 129.5 percent in value from the seasonal year August 1975/July

1976 to the seasonal year August 1976/July 1977. From August 1976/July 1977 to August 1977/July 1978, company imports increased by 147.9 percent in quantity and by 171.5 percent in value. Company imports as a percentage of sales increased from August 1976/July 1977 to August 1977/July 1978.

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with girls' bathing suits and sundresses produced at Gramercy Mills, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification: "All workers of Gramercy Mills, Incorporated, Passaic, New Jersey who became totally or partially separated from employment on or after April 7, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

(FR Doc. 78-36160 Filed 12-28-78; 8:45 am)

#### [4510-28-M]

(TA-W-4309)

#### HARRIS FISHING CORP., F/V MARISSA ANN, MATTAPOSETT, MASS.

#### Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4309: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 25, 1978 which was filed on behalf of workers and former workers catching and selling fish for F/V Marissa Ann, Mattaposeett, Massachusetts.

The investigation revealed that the name of the company that owns the Marissa Ann is Harris Fishing Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on November 11, 1978 (43 FR 51866). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Harris Fishing Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of groundfish decreased in quantity from 755,538 thousand pounds in 1976 to 736,302 thousand pounds in 1977 and decreased from 349,115 thousand pounds in the first six months of 1977 to 346,559 thousand pounds in the first six months of 1978. The ratio of imports to domestic production decreased from 191.0 percent in 1976 to 167.8 percent in 1977 and decreased from 159.1 percent in the first half of 1977 to 146.3 percent in the first half of 1978.

Commercial landings of groundfish at Gloucester, Massachusetts increased from 46,672 thousand pounds in 1976 to 70,453 thousand pounds in 1977 and from 36,483 thousand pounds in the first six months of 1977 to 44,075 thousand pounds in the first six months of 1978.

On March 30, 1977, the Fisheries Conservation Zone (FCZ) which limits domestic and foreign catches within 200 miles of its boundaries was established. Domestic landings of cod, haddock and yellowtail flounder were restricted and no foreign fishing of these species is permitted. Since the institution of FCZ, total imports of groundfish have declined.

#### Conclusion

After careful review, I determine that all workers of Harris Fishing Corporation, F/V Marissa Ann, Mattaposeett, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.



Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-36161 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4186]

HASPEL BROTHERS INC., NEW ORLEANS, LA.

Certification Regarding Eligibility To Apply for  
Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4186: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 18, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's suits at Haspel Brothers Inc., New Orleans, Louisiana. The investigation revealed that Haspel Brothers made sportcoats and suitcoats, but no pants or vests.

Workers at Haspel Brothers Inc. were previously certified as eligible to apply for trade adjustment assistance on April 2, 1976 (TA-W-574). That certification remained in effect until April 2, 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Haspel Brothers, Inc., its customers, (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of men's and boy's tailored sportcoats decreased from 30,161 thousand in 1976 to 29,921 thousand in 1977. Imports increased from 4,401 thousand in the first three quarters of 1977 to 4,920 thousand during the same period in 1978. The ratio of imports to domestic production decreased from 30.0 percent in 1976 to 28.5 percent in 1977.

U.S. imports of men's and boy's tailored suits increased from 22,246 thou-

sand in 1976, to 24,587 thousand in 1977. Imports decreased from 3,134 thousand in the first three quarters of 1977 to 2,943 thousand during the same period of time in 1978. The ratio of imports to domestic production increased from 19 percent in 1976 to 20 percent in 1977. Since Haspel Inc. sells its total production to Haspel Brothers Inc., a survey of the customers of Haspel Brothers Inc. was conducted. The survey revealed that customers representing a significant amount of business with Haspel Brothers Inc. decreased purchases from Haspel Brothers Inc. and increased purchases of imports in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period of 1977.

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the men's sportcoats and suit jackets produced at Haspel Brothers Inc., New Orleans, Louisiana contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification: "All workers of Haspel Brothers Inc., New Orleans, Louisiana who became totally or partially separated from employment on or after April 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-36162 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3723]

INDUSTRIAL DIVISION, AEROQUIP CORP.,  
YOUNGSTOWN, OHIO

Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3723: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 18, 1978 in response to a worker petition received on May 11, 1978 which was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America on behalf of workers and former workers producing wire braided hydraulic hose, freon hose, spiral hose, fuel and oil hose, loom hose and

flex mandrel hose at the Youngstown, Ohio plant of Aeroquip Corporation, Industrial Division. The investigation revealed that the plant primarily produces reinforced rubber hose.

The Notice of Investigation was published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Aeroquip Corporation, its customers, the Rubber Manufacturing Association, the National Fluid Power Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey conducted with customers of Aeroquip revealed that most customers did not purchase imported reinforced rubber hose in 1977 or 1978. The customers that did import reinforced rubber hose had not decreased their purchases from Aeroquip during this same time frame.

#### Conclusion

After careful review, I determine that all workers of the Youngstown, Ohio plant of Aeroquip Corporation, Industrial Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.

[FR Doc. 78-36163 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3313]

JULES L. SIMON, INC., FRANKFORT, IND.

Notice of Determinations Regarding Eligibility  
to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3313: investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 7, 1978 in response to a worker petition received on February 27, 1978 which was filed on behalf of workers and former workers producing men's sport and suit coats at Jules L. Simon, Incorporated, Frankfort, Indiana.

The Notice of Investigations was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jules L. Simon, Incorporated, its manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers producing sport coats and without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boy's tailored dress coats and sportcoats decreased absolutely and relatively from 1976 to 1977. In the first quarter of 1978 imports increased absolutely compared to the same period of 1977.

With respect to workers producing suit coats, evidence developed in the course of the investigation revealed that all of the criteria have been met.

U.S. imports of men's and boys' tailored suits increased from 1976 to 1977 and decreased in the first quarter of 1978 compared to the same quarter of 1977.

The manufacturer which provided all of the contract work produced at Jules L. Simon, Incorporated is now out of business. Customers of the manufacturer increased their purchases of imported suits in 1977 and increased purchases of imported suits in the first six months of 1978 compared to the same period in 1977. The parent company of Jules L. Simon, Inc. started a new division in 1978 which is an importer of men's clothing.

#### Conclusion

After careful review, I determine that all workers of men's suit coats produced at Jules L. Simon, Incorporated, Frankfort, Indiana contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In

accordance with the provisions of the Act, I make the following certification:

"All workers of Jules L. Simon, Incorporated, Frankfort, Indiana engaged in employment related to the production of men's suit coats who became totally or partially separated from employment on or after August 28, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

I further conclude that all workers of Jules L. Simon, Incorporated engaged in employment related to the production of men's sportcoats are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 11th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management  
Administration and Planning.

[FR Doc. 78-36169 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3983]

MONTICO MANUFACTURING CO.,  
AMSTERDAM, N.Y.

Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3983: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 19, 1978 in response to a worker petition received on July 17, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing women's knitted sportswear at Montico Manufacturing Company, Amsterdam, New York. The investigation revealed that Montico produced women's knit tops and slacks.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Montico Manufacturing Company, its manufacturers and their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Some of the manufacturers which contracted with Montico Manufacturing were surveyed by the Department. Those manufacturers which had decreased contract work with Montico indicated that they did not purchase imported women's slacks or tops or use foreign contractors to produce these items in 1977 or during the first half of 1978.

Some customers of Montico's manufacturers which reported decreased sales were also surveyed by the Department. Respondents, in general, indicated that they did not decrease purchases from the manufacturer while increasing purchases of imported women's slacks and tops.

#### Conclusion

After careful review of the facts obtained in the investigation, I determine that all workers of Montico Manufacturing Company, Amsterdam, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

[FR Doc. 78-36164 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3875]

THE MOORE CO., INC., SPRINGFIELD, MASS.

Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3875: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 20, 1978 in response to a worker petition received on June 19, 1978 which was filed by the General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees, Local No. 404 on behalf of workers and former workers producing hand tools at the Springfield, Massachusetts plant of the Moore Company, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 30, 1978 (43 FR 28580). No public



hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Moore Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production at the Springfield, Massachusetts plant of the Moore Company, Inc., increased from 1975 to 1976 and from 1976 to 1977. Estimated total sales for 1978 were greater than sales in 1977. Actual sales and actual production increased in the first two quarters of 1978 compared with the same period in 1977.

#### Conclusion

After careful review, I determine that all workers of the Springfield, Massachusetts plant of the Moore Company, Inc. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
(FR Doc. 78-36165 Filed 12-28-78; 8:45 am)

[4510-28-M]

(TA-W-3338)

M. T. SHAW, INC., COLDWATER, MICH.  
Certification of Eligibility To Apply for Worker  
Adjustment Assistance: Correction

In FEDERAL REGISTER Doc. 78-21744 appearing on pages 34558-34559 in the FEDERAL REGISTER of August 4, 1978, the second paragraph of the Conclusion should be corrected to read as follows: "All workers at M. T. Shaw, Incorporated, Coldwater, Michigan, who became totally or partially separated from employment on or after May 3, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
(FR Doc. 78-36168 Filed 12-28-78; 8:45 am)

[4510-28-M]

(TA-W-4353)

NORTHAMPTON STEEL CORP., EASTON, PA.

Notice of Negative Determination Regarding  
Eligibility to Apply for Worker Adjustment  
Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4353: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 7, 1978 in response to a worker petition received on November 3, 1978 which was filed on behalf of workers and former workers fabricating structural steel at Northampton Steel Corporation, Easton, Pennsylvania. The investigation revealed that the plant is a wholly owned subsidiary of White Plains Iron Works, Pleasantville, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53852-3). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of White Plains Iron Works, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of Fabricated Structural Steel increased from 94.4 thousand tons in 1976 to 142.1 thousand tons in 1977, and decreased from 117.9 thousand tons in January-September 1977 to 101.4 thousand tons in January-September 1978.

The investigation revealed that none of the White Plains Iron Works unsuccessful contract bids in the second half of 1977 and in the first half of 1978

were awarded to foreign suppliers of fabricated structural steel.

#### Conclusion

After careful review, I determine that all workers of Northampton Steel Corporation, Easton, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.

(FR Doc. 78-36166 Filed 12-28-78; 8:45 am)

[4510-28-M]

(TA-W-4262)

PITTSBURGH HAT AND CAP CO., INC.,  
PITTSBURGH, PA.

Certification Regarding Eligibility To Apply for  
Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4262: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 16, 1978 in response to a worker petition received on October 12, 1978 which was filed on behalf of workers and former workers producing baseball caps at Pittsburgh Hat and Cap Co., Inc., Pittsburgh, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50269-50270). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Pittsburgh Hat and Cap Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's, boy's, women's, misses', and junior's knit headwear and cloth hats and caps increased absolutely in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

Several customers who were surveyed indicated they increased purchases of imports while decreasing purchases from Pittsburgh Hat and Cap Co.

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with knit and cloth caps produced at the Pittsburgh Hat and Cap Co. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification: "All workers of Pittsburgh Hat and Cap Co., Pittsburgh, Pa., who became totally or partially separated from employment on or after September 19, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
(FR Doc. 78-36167 Filed 12-28-78; 8:45 am)

[4510-28-M]

(TA-W-4280)

SLATER PAPER BOX CO., FALL RIVER, MASS.

Notice of Negative Determination Regarding  
Eligibility To Apply for Worker Adjustment  
Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4280: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 16, 1978 which was filed on behalf of workers and former workers producing corrugated and plain boxes at Slater Paper Box Company, Fall River, Mass.

The investigation revealed that the plant primarily produces paper folding boxes.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-59). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Slater Paper Box Co., Inc.; SPB Liquidating Co., Great Neck, N.Y.; APL Corp., New York, N.Y.; the American Paper and Pulp Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to

whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separations, or threat thereof, and to the absolute decline in sales or production.

The folding paper boxes produced by Slater Paper Box Co. are included in the import and production category "folding paperboard boxes". Imports of folding paperboard boxes have had a negligible impact on the domestic industry. Imports have increased absolutely from 900 tons in 1976 to 1,100 tons in 1977 and from 400 tons in the first half of 1977 to 700 tons in the first half of 1978; however, the ratio of imports to domestic production has been less than .1 percent during the period 1973 through the first half of 1978. The Department's investigation revealed that Slater Paper Box ceased operations in September 1978, due to internal financial difficulties.

#### Conclusion

After careful review, I determine that all workers of Slater Paper Box Company, Fall River, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of December 1978.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration, and Planning.  
(FR Doc. 78-36170 Filed 12-28-78; 8:45 am)

[4510-28-M]

(TA-W-4282)

TIARA FOOTWEAR, INC., DOVER, N.H.

Certification Regarding Eligibility To Apply for  
Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4282: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 17, 1978 which was filed on behalf of workers and former workers producing women's casual footwear (including clogs) and boots at Tiara Footwear, Inc., Dover, N.H.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-59). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Tiara Footwear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's and misses' nonrubber footwear (excluding athletic footwear) decreased from 218.9 million pairs in 1976 to 204.4 million pairs in 1977 and increased from 107.6 million pairs during the first half of 1977 to 111.4 million pairs during the first half of 1978. The ratio of imports to domestic production increased from 127.6 percent in 1976 to 134.6 percent in 1977.

A Department survey was conducted with major customers of Tiara Footwear, Inc. The survey revealed that two customers, representing the preponderance of Tiara's sales, increased purchases of women's and misses' non-rubber footwear from foreign sources, and decreased purchases from Tiara Footwear, from 1976 to 1977 and during the first three quarters of 1978 compared to the same period in 1977.

Tiara Footwear, Inc., was certified by the U.S. Department of Commerce as eligible to apply for trade adjustment assistance on December 14, 1977 (F-184).

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and misses' nonrubber footwear (excluding athletic footwear) produced at Tiara Footwear, Inc., Dover, N.H., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the act, I make the following certification:

"All workers at Tiara Footwear, Inc., Dover, N.H. who became totally or partially separated from employment on or after November 26, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,  
Acting Director, Office of  
Foreign Economic Research.  
(FR Doc. 78-36171 Filed 12-28-78; 8:45 am)



[4510-28-M]

[TA-W-4271]

**UNITED STATES STOVE CO. FOUNDRY, SOUTH PITTSBURG, TENN.****Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4271: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 17, 1978 in response to a worker petition received on October 17, 1978 which was filed by the International Molders and Allied Workers Union on behalf of workers and former workers producing castings for coal and wood stoves at the South Pittsburg, Tenn. foundry of the U.S. Stove Co.

The Notice of Investigation was published in the *FEDERAL REGISTER* on October 27, 1978 (43 FR 50271). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the U.S. Stove Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of gray, white and ductile iron castings increased 29.8 percent from 1976 to 1977, from 104.2 thousand short tons in 1976 to 135.2 thousand short tons in 1977. These imports increased 5.7 percent the first three quarters of 1978 (114.9 thousand short tons) compared to the same period of 1977 (108.7 thousand short tons). The ratio of imports to U.S. production of gray, white and ductile iron castings increased from 1.5 percent in 1976 to 1.9 percent in 1977, and remained 2.0 percent during the first three quarters of 1978, compared to the same period of 1977.

The U.S. Stove Co. began importing castings for coal and wood stoves in September of 1978. The company plans to import all their castings in the future and close down the foundry permanently by December 31, 1978.

**Conclusion**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with castings for coal and wood stoves produced at the South Pittsburg, Tenn. foundry

of the U.S. Stove Co. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification: "All workers of the U.S. Stove Co. Foundry, South Pittsburg, Tenn. engaged in employment related to the production of castings for coal and wood stoves who became totally or partially separated from employment on or after October 14, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-36172 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4257]

**VOLCO BRASS AND COPPER CO., KENILWORTH, N.J.****Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4257: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 6, 1978 which was filed by the United Steelworkers of America Union on behalf of workers and former workers producing brass and copper products.

The Notice of Investigation was published in the *FEDERAL REGISTER* on October 20, 1978 (43 FR 49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Volco Brass and Copper Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Total sales and production of brass and copper products increased in 1977

compared with 1976 and continued to increase in the first three quarters of 1978 compared with the like period in 1977.

**Conclusion**

After careful review, I determine that all workers of Volco Brass and Copper Co., Kenilworth, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-36173 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4109]

**WESTINGHOUSE ELECTRIC CORP., LIGHTING DIVISION, CLEVELAND, OHIO****Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4109: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 22, 1978 in response to a worker petition received on August 18, 1978 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing outdoor lighting fixtures at Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio.

The Notice of Investigation was published in the *FEDERAL REGISTER* on September 5, 1978 (43 FR 39458-39459). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Westinghouse Electric Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of outdoor lighting fixtures and components increased in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

In mid-1976, Westinghouse began transferring final assembly of outdoor lighting fixtures to a Westinghouse plant in Vicksburg, Miss. A significant

portion of the production of components for the fixtures was transferred to a Westinghouse plant located offshore.

**Conclusion**

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with outdoor lighting fixtures produced at Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification: "All workers of Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio who became totally or partially separated from employment on or after August 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

JAMES F. TAYLOR,  
*Director, Office of Management,  
Administration, and Planning.*

[FR Doc. 78-36174 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4325]

**WILLIS AND PAUL CORP., WIND GAP, PA.****Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4325: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 31, 1978 in response to a worker petition received on October 31, 1978 which was filed by Local 666 of the International Association of Bridge, Structural and Ornamental Workers on behalf of workers and former workers producing fabricated structural steel at the Willis and Paul Corp., Wind Gap, Pa. The investigation revealed that the plant primarily fabricates trestles and channels for conveyor systems.

The Notice of Investigation was published in the *FEDERAL REGISTER* on November 7, 1978 (43 FR 51865). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Willis and Paul Corp., the U.S. Department of Commerce, the U.S. International Trade Commis-

sion, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of investigation indicated the U.S. imports of fabricated trestles and channels for conveyor systems are insignificant.

Any imports of fabricated trestles and channels would be classified in the import category fabricated structural steel. Information developed by the Department of Labor indicates that most imports in this category are fabricated structural steel for buildings, roads, bridges and transmission towers. The Department of Labor has not been able to develop any evidence of imports of fabricated trestles and channels for conveyor systems.

**Conclusion**

After careful review, I determine that all workers of the Willis and Paul Corporation, Wind Gap, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of December 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-36175 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3995]

**YOUTHFUL FOUNDATIONS, INC., NEW YORK, N.Y.****Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3995: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 25, 1978 in response to a worker petition received on July 10, 1978 which was filed by the International Ladies' Garment Workers Union on

behalf of workers and former workers producing brassiere parts at Youthful Foundations, Inc., New York, New York. The investigation revealed that the company produces bust cups.

The Notice of Investigation was published in the *FEDERAL REGISTER* on August 1, 1978 (43 FR 33840-41). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Youthful Foundations, Inc., the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The loss in export sales accounted for all of the decline in production at the subject firm from 1976 through the first six months of 1978. Industry sources indicate that imports of bust cups are negligible.

**Conclusion**

After careful review, I determine that all workers of Youthful Foundations, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,  
*Acting Director, Office of  
Foreign Economic Research.*

[FR Doc. 78-36176 Filed 12-28-78; 8:45 am]

[7536-01-M]

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****HUMANITIES PANEL ADVISORY COMMITTEE****Meeting**

DECEMBER 20, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in the first floor conference room, from 9 a.m. to 5:30 p.m. on January 15, 1979.



The purpose of the meeting is to review NEH Special Projects applications submitted to the National Endowment for the Arts and Humanities for projects beginning after February 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN MCCLEARY,  
Advisory Committee  
Management Officer.

(FR Doc. 78-36247 Filed 12-28-78; 8:45 am)

#### [7537-01-M]

##### MUSIC ADVISORY PANEL (COMPOSER/ LIBRETTIST SECTION)

###### Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composer/Librettist Section) to the National Council on the Arts will be held on January 25, 1979, from 9:30 a.m.—5:30 p.m.; January 26, 1979, from 9:30 a.m.—5:30 p.m.; January 27, 1979, from 9:30 a.m.—5:30 p.m.; January 28, 1979, from 9:30 a.m.—5:30 p.m.

A portion of this meeting will be open to the public on January 26, 1979, from 1:30 p.m.—5:30 p.m. for a discussion on Guidelines.

The remaining sessions of this meeting on January 25, 1979, from 9:30 a.m.—5:30 p.m.; January 26, 1979, from 9:30 a.m.—1:30 p.m.; January 27, 1979, from 9:30 a.m.—5:30 p.m.; January 28, 1979, from 9:30 a.m.—5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *FEDERAL REGISTER* March 17, 1977, these ses-

sions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,  
Director, Office of Council and  
Panel Operations, National  
Endowment for the Arts.

DECEMBER 20, 1978.

(FR Doc. 78-36236 Filed 12-28-78; 8:45 am)

#### [7590-01-M]

##### NUCLEAR REGULATORY COMMISSION

(Docket No. 50-254)

##### COMMONWEALTH EDISON CO. AND IOWA- ILLINOIS GAS & ELECTRIC CO.

##### Proposed Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-29, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company (the licensee), for operation of the Quad Cities Nuclear Power Station, Unit No. 1, located in Rock Island County, Illinois.

The amendment would allow the operation of Quad Cities Unit No. 1 during operating Cycle 5 with a fuel type not previously used in that facility in accordance with the licensee's application for amendment dated November 20, 1978. The fuel type has been reviewed and approved by the NRC staff for use in BWR 3 reactors.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 29, 1979, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board,

designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-

6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Thomas Ippolito: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this *FEDERAL REGISTER* notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. John W. Rowe, Isham, Lincoln, Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.712(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the application for amendment dated November 20, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Moline Public Library, 504-17th Street, Moline, Illinois 61265.

Dated at Bethesda, Maryland this 20th day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,  
Chief, Operating Reactors  
Branch No. 3, Division of Op-  
erating Reactors.

(FR Doc. 78-35944 Filed 12-28-78; 8:45 am)

#### [7590-01-M]

##### ADVISORY COMMITTEE ON REACTOR SAFETY GUARDS SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

###### Meeting

The ACRS Subcommittee on Emergency Core Cooling will hold an open meeting on January 16, 1979 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555 to review NRC licensing activities related to the proposed revision of Appendix K, 10, CFR 50, the NRC audit of Code Quality Assurance Programs, the Standard Problem Program, a semiscale small break test,

and other items of current interest. Notice of this meeting was announced December 20, 1978 (43 FR 59447).

In accordance with the procedures outlined in the *FEDERAL REGISTER* on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Tuesday, January 16, 1979, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 22, 1978.

JOHN C. HOYLE,  
Advisory Committee  
Management Officer.

(FR Doc. 78-36288 Filed 12-28-78; 8:45 am)

#### [7590-01-M]

##### AGREEMENTS FOR COOPERATION BETWEEN THE STATE OF INDIANA AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION

The Commission, in mid-January 1976 adopted a policy of entering into agreements with States that have been delegated responsibility by EPA for issuance of National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Federal Water Pollution Control Act.

Although considerable latitude is provided, generally such agreements embody the principles of the Second Nuclear Regulatory Commission/Environmental Protection Agency Memorandum of Understanding (NRC/EPA) (F.R. Vol. 40, No. 251, p 60115 ff, December 31, 1975) for cooperation in the licensing of nuclear power plants.

To date, five such agreements have been consummated. Three of these agreements, those with the Virginia State Water Control Board, the New York State Board on Electric Generation Siting and the Environment and the Departments of Environmental Conservation and Public Service, and the State of South Carolina were published in the *FEDERAL REGISTER*, Vol. 43, No. 88, p 19485 ff, on May 5, 1978.

The fourth, a very broad agreement entitled "Memorandum of Agreement Between the State of Washington and the U.S. Nuclear Regulatory Commission," became effective on September 6, 1978. This agreement applies to all nuclear facilities subject to licensing by NRC or certification by the State; it applies to matters beyond water quality. The text of this Agreement was published in the *FEDERAL REGISTER*, Vol. 43, No. 188, p 43774 ff, on September 27, 1978.

The fifth is also a very broad agreement similar to that between the State of Washington and is entitled "Memorandum of Agreement Between the State of Indiana and the U.S. Nuclear Regulatory Commission." This agreement is intended to provide the basis for subsequent detailed subagreements between the parties in areas of mutual concern. The first such subagreement has also been consummated; it is entitled "Agreement Between the Indiana Environmental Management Board and the U.S. Nuclear Regulatory Commission Pursuant to the Federal Water Pollution Control Act, as amended (FWPCA)." Both the Agreement and the Subagreement became effective when signed in Indianapolis on December 14, 1978; the text of both is published below.

##### FOR FURTHER INFORMATION CONTACT:

Frank W. Young, Office of State Programs, telephone 301-492-7794, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 21st day of December 1978.



# For the Nuclear Regulatory Commission.

ROBERT G. RYAN,  
Director,  
Office of State Programs.

## MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF INDIANA AND THE U.S. NUCLEAR COMMISSION

This Memorandum of Agreement between the State of Indiana (hereafter "State") and the U.S. Nuclear Regulatory Commission (hereafter "NRC") expresses the desire of the parties to cooperate in the regulation of nuclear activities; it sets forth mutually agreeable principles of cooperation between the State and NRC in areas subject to the jurisdiction of the State or the NRC or both. This agreement is intended to provide the basis of subsequent detailed subagreements between the parties.

Close cooperation between the signatories will help assure that the goals and policies of State and Federal law will be carried out efficiently and expeditiously.

With the execution of this Memorandum, the State and NRC agree to consult regularly and cooperate in exploring and devising appropriate procedures to minimize, to the extent possible, duplication of effort and to avoid delays in decisionmaking so that effective use will be made of the resources of the State and NRC.

### PRINCIPLES OF COOPERATION

1. The State and NRC agree to explore together the development of detailed subagreements in areas of mutual concern, including environmental reviews (or portions thereof) of nuclear facilities' subject to licensing; confirmatory radiological environmental monitoring around operating nuclear facilities; decommissioning of nuclear facilities; emergency preparedness planning; response to radiological incidents; and radioactive material transporting monitoring.

2. Subparagraphs under this Memorandum may provide for activities to be performed by either party under mutually acceptable guidelines and criteria which assure that the needs of both are met.

3. For activities performed by one party at the request of the other party under specific subagreements to this Memorandum, the party making the request will explore means by which compensation may be made available to the other party or by which the costs may be shared by the parties.

4. NRC agrees to explore with the State the possibility of sharing of proprietary information in NRC's possession with the State.

5. Each party will explore means by which its training programs may be made available to the other party.

6. Nothing in this Memorandum is intended to restrict or extend the statutory authority of either NRC or the State.

7. The principal NRC contact under this Memorandum shall be the Director of the

\*For the purpose of this Memorandum of Agreement, the term nuclear facilities is defined to include the following plants or facilities within Indiana: a. nuclear power and test facilities; b. nuclear fuel reprocessing facilities; c. uranium isotope enrichment facilities; d. nuclear fuel fabrication plants; e. nuclear waste treatment and storage plants; f. uranium milling plants; and g. uranium hexafluoride conversion plants.

Office of State Programs. The principal State contact shall be the Technical Secretary of the Environmental Management Board. Subagreements will name appropriate individuals, agencies or offices as contacts.

8. This Memorandum shall take effect immediately upon signing by the Governor of the State and the Chairman of the Nuclear Regulatory Commission, and may be terminated upon 30 days written notice by either party.

Dated at Indianapolis, Indiana, this 14th day of December 1978.

For the State of Indiana.

OTIS R. BOWEN,  
Governor.

Dated at Washington, D.C., this 21st day of November 1978.

For the United States Nuclear Regulatory Commission.

JOSEPH M. HENDRIE,  
Chairman.

## AGREEMENT BETWEEN THE INDIANA ENVIRONMENTAL MANAGEMENT BOARD AND THE U.S. NUCLEAR REGULATORY COMMISSION PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED (FWPCA)

The State of Indiana, hereinafter referred to as the State, is a permit issuing State under Section 402 of the Federal Water Pollution Control Act, as amended (FWPCA). As such the State is not directly affected by the "Second Memorandum of Understanding Regarding Implementation of Certain Nuclear Regulatory Commission and Environmental Protection Agency Responsibilities Under the Federal Water Pollution Control Act, as amended (FWPCA) and the national Environmental Policy Act of 1969." However, the State agrees with the principles embodied in the Second Nuclear Regulatory Commission (NRC)/Environmental Protection Agency (EPA) Memorandum and wishes to cooperate with NRC in implementing these principles.

Specifically, these cooperative efforts will extend to requirements for the control and consideration of impacts on water quality and biota associated with the licensing and regulation, including early site approval\* of the following plants or facilities within Indiana:

- Nuclear power and test facilities,
- Nuclear fuel reprocessing facilities,
- Uranium isotope enrichment facilities,
- Nuclear fuel fabrication plants,
- Nuclear waste treatment and storage plants,
- Uranium milling plants, and
- Uranium hexafluoride conversion plants.

1. The State and NRC will work together to identify and consolidate the environmental information needed for early evaluations related to impacts on water quality and biota under the FWPCA with the objective that the scope, form and timeliness of the information to be submitted by the applicant satisfy the requirements of both the State and NRC. This will include information needed for issuance of State water quality certifications pursuant to Section

\*See 10 CFR Part 2, Subpart F and Appendix A, Paragraph I(c).

401 and NPDES permits pursuant to Section 402 (including where applicable Section 316(b) considerations regarding best technology available as applied to cooling water intake structures and Section 316(a) determinations regarding the granting of alternative effluent limitations for the thermal component of discharges) and information needed to evaluate the environmental impact of the facility based on compliance with FWPCA requirements.

2. The State and NRC will meet, as appropriate, at an early time prior to and/or during the environmental review process for each facility or plant subject to this Agreement to discuss potential impacts on water quality and biota.

3. The State will exercise its best efforts to evaluate the levels of discharges and impacts on water quality and biota pursuant to Section 402 and 316(a), as appropriate, and complete cooling water intake structure evaluations pursuant to Section 316(b) as far as possible in advance of the planned date of issuance by NRC of the final environmental impact statement for the construction permit for each nuclear power reactor. The State also will exercise its best efforts to make such evaluations as far as possible in advance of the planned date of issuance of the final environmental impact statement for any other plant or facility subject to this Agreement or issuance of early site approvals associated with nuclear power and other facilities.

Further, where possible, the State's comments on NRC's draft environmental impact statement for each such facility or plant will reflect such evaluations. The State will undertake to issue a complete Section 402 permit as soon as possible prior to the planned date of authorization by the NRC of any commencement of construction\* or issuance by NRC of any license, or early site approval, whichever is applicable.

Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit (5 years maximum) and terms and conditions with regard to cooling water intake structures and Section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR, Chapter I, Subchapter N. Permits may be reissued, or modified as appropriate, and any reissued or modified permit, to be effective at the commencement of actual discharge as provided above may require additional limitations and controls based on data gathered during the initial permit or may require additional Section 316(a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. Applications for permit reissuance as provided above will be evaluated by the State in light of the policy to assure to the maximum extent possible that subsequent considerations regarding impacts on water quality and biota will not result in the need for significant changes in plant design or in cost and benefits of the operation of the facility subsequent to the

\*The term "commencement of construction" means commencement of construction as defined to 10 CFR 50.10(c), 30.4(w), 40.4(n) and 70.4(a), as applicable.

completion of NRC's environmental review."

4. The State will work closely with NRC to assure that water quality certifications pursuant to Section 401 for the facilities subject to this Agreement that require such certification are issued in advance of the planned date of issuance of NRC staff's final environmental impact statement for the facility.

5. The State and NRC will maintain close contact on water quality and related matters during the entire environmental review, including:

- Open interagency communications, and mutual cooperation and coordination on all relevant water quality matters;
- A status meeting, where appropriate, after completion of the environmental review or subsequent thereto, on any significant new considerations that develop, e.g., a major change in plant design or the identification of significant considerations regarding impacts on water quality or biota that were not previously evaluated as may result from a major change in plant design.

6. The State and NRC will consider the feasibility of holding combined or concurrent hearings on the State's Section 402 permits and NRC's construction permits, or other actions, on a case-by-case basis. If there are areas involving impact on water quality or biota where there are significant differences of opinion between the State and NRC, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement.

7. The principal NRC contact under this Agreement shall be the Assistant Director for Environmental Projects. The principal State contact under this Agreement shall be the Technical Secretary of the Environmental Management Board or his designee.

8. Nothing in this Agreement is intended to restrict the statutory authority of either NRC or the State. Nothing in this Agreement affects any authority of the State under the Clean Air Act, as amended.

9. This Agreement shall take effect immediately upon signing by the State and the Nuclear Regulatory Commission. The Agreement shall apply to all pending and future applications for licenses or permits subject to this Agreement except that, with respect to applications for licenses or permits for facilities and plants docketed prior to the effective date of the Agreement, it shall only be applied to the maximum extent practicable.

Dated at Washington, D.C. this 21st day of November, 1978.

For the United States Nuclear Regulatory Commission.

LEE V. GOSSICK,  
Executive Director for Operations.

Dated at Indianapolis, Indiana, this 1st day of December, 1978.

For the Indiana Environmental Management Board.

\*A facility which has been given §316(a) alternative effluent limitations is not entitled to the 10-year grace period (or applicable amortization period) provided for in §306(d) for new sources or in 316(c) for modified sources.

RALPH C. PICKARD,  
Technical Secretary of the  
Environmental Management Board.

[FR Doc. 78-36300 Filed 12-28-78; 8:45 am]

## [7590-01-M]

[Docket Nos. STN 50-592 and STN 50-593]

## ARIZONA PUBLIC SERVICE CO., ET AL. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

### Reconstitution of Board

Commissioner Victor Gilinsky is hereby designated to replace Gustave A. Linenberger as a member of the Atomic Safety and Licensing Board in this proceeding. Commissioner Gilinsky's address is U.S. Nuclear Regulatory Commission (Room H-1149), Washington, D.C. 20555.

It is so ordered.\*

Dated at Washington, D.C., this 22d day of December, 1978.

For the Commission.

SAMUEL J. CHILK,  
Secretary of the Commission.

[FR Doc. 78-36291 Filed 12-28-78; 8:45 am]

## [7590-01-M]

[Docket Nos. 50-237 and 50-249]

### COMMONWEALTH EDISON CO.

#### Granting of Relief from ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Commonwealth Edison Company. The relief relates to the inservice inspection (testing) program for the Dresden Nuclear Power Station, Unit Nos. 2 and 3 (the facilities) located in Grundy County, Illinois. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief is granted, on an interim basis, pending completion of our detailed review, from those inservice inspection and testing requirements of the ASME Code that the licensee has determined to be impractical within the limitations of design, geometry, and materials of construction of components, because compliance would

\*Commissioner Gilinsky did not participate in the Commission's vote on this order, and he will not participate in any future Commission reviews in this proceeding. Commissioner Gilinsky intends to participate as a member of the Licensing Board through that Board's initial decision.

result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action; see (1) the request for relief dated July 31, 1978, and (2) the Commission's letter to the licensee dated December 20, 1978.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 20th day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,  
Chief, Operating Reactors  
Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-36292 Filed 12-28-78; 8:45 am]

## [7590-01-M]

[Dockets Nos. 50-269, 50-270 and 50-287]

### DUKE POWER CO.

#### Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 66, 66 and 63 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 located in Oconee County, South Carolina. The



amendments are effective as of the date of issuance.

The amendments revise the Station's common Technical Specifications to support the operation of Oconee Unit No. 2 at full rated power during Cycle 4 after core reload and removal of the orifice rod assemblies from the core. These amendments also revise the Technical Specifications for Units 1, 2 and 3 in regard to control rod operability.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with these amendments.

For further details with respect to this action, see (1) the application for amendments dated September 18, 1978, as supplemented September 25, and November 1, 1978, (2) Amendments Nos. 66, 66 and 63 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For the Nuclear Regulatory Commission.

GERALD B. ZWETZIG,  
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

(FR Doc. 78-36293 Filed 12-28-78; 8:45 am)

[7590-01-M]

(Docket No. 50-270)

**DUKE POWER CO. (OCONEE NUCLEAR STATION UNIT NO. 2)**

**Exemption**

**I.**

Duke Power Company (the licensee) is the holder of Facility Operating License No. DPR-47 which authorizes the operation of the nuclear power reactor known as Oconee Nuclear Station, Unit No. 2 (the facility), at steady reactor power levels not in excess of 2568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Oconee County, South Carolina.

**II.**

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 9, 1975 an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR Part 50.46, and Appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200°F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Oconee Nuclear Station Unit No. 2 has an ECCS configuration which consists of two HPI trains which are supplied by three HPI pumps. Each train injects into two of

the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. The two parallel HPI trains are connected but are kept isolated by manual valves (known as the cross-over valves) that are normally closed.

Duke Power has proposed by letter dated April 21, 1978, to maintain all three pumps in an operable status. The Oconee emergency power system is designed with sufficient capacity for this mode of operation. Upon receiving a safety injection signal the HPI pumps are started and valves in the injection lines are opened. Assuming loss of off-site power and the worst single failure (the HPI pump C or the HPI valve HP26), two HPI pumps would still be available and only one of the two injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about 50% of the output of two high pressure pumps) could flow out the break. Therefore, for the worst combination of break location and single failure, 50% of the flow rate of two high pressure ECCS pumps would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in the pump discharge line and have determined that to meet the limits of 10 CFR 50.46(b), operator action is required to open the two manual operated crossover valves and to manually align the motor driven isolation valve which had failed to open. This would allow the flow from the two HPI pumps to feed all four reactor coolant legs. B&W has assumed that 30% of the flow would be lost through the break and 70% would enter the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within five minutes and have them fully opened and an adequate flow split obtained within the following 10 minutes. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has prepared a summary entitled "Analysis of Small Breaks in the Reactor Coolant Pump Discharge

Piping for the B&W Lowered Loop 177 FA Plants," April 24, 1978 (the B&W Summary), which describes the methods used and the results obtained in the above analysis. The analysis models operator action by assuming a step increase in flow to the reactor vessel (with balanced flow in the three intact loops) ten minutes after the LOCA reactor protection system trip signal occurs.

On April 26, 1978, the Commission issued an Order for Modification of License which amended the license for Oconee Unit 2 requiring (1) submission of a reevaluation of the emergency core cooling system calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in the licensee's letter of April 21, 1978 and (2) operation in accordance with the procedures described in the licensee's letter of April 21, 1978.

By letter dated May 16, 1978, the licensee submitted a copy of the B&W Summary for our review. In their submittal the licensee stated that the analysis indicates that the ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operation of Oconee units at the rated core thermal power of 2568 Mwt with operating procedures described in their letter of April 21, 1978, is wholly in conformance with the provisions of 10 CFR 50.46. We have reviewed the B&W Summary and find that the methods of analysis meet the requirements of 10 CFR Part 50.46.

By letter dated April 20, 1978 and as supplemented on April 27, 1978, the licensee submitted proposed Technical Specifications to implement the operating procedures and maintenance of all three HPI pumps in an operable status as described in the licensee's April 21, 1978 letter. We have issued these Technical Specifications in a license amendment dated October 23, 1978.

In the licensee's submittal of June 8, 1978, it was stated that to meet the limits of 10 CFR 50.46, operator action at the valve locations is required to open High Pressure Injection (HPI) Pump B-C discharge header cross over valves (HP-116 and HP-117) and the HPI injection line A engineering safeguards valve (HP-26) within 10 minutes.

Reliance on local operation of valves this soon after the onset of a loss-of-coolant accident is not desirable on a permanent basis. The licensee has requested an exemption from the requirements of 10 CFR 50.46 by letter dated September 18, 1978, for operation at Oconee 2 during Cycle 4 until such time as a permanent solution to this problem can be implemented.

The original concern derived from an unexpected but nevertheless inad-

equately assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, combined reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and will be replaced as promptly as possible by returning the system to simple control room actuation. To this extent, the original defect still remains until the modifications are made to eliminate the reliance on prompt operator actions.

We have reviewed the effects of changes made to the facility during the current refueling outage and have concluded that operation of Oconee Unit 2 at power levels of up to 2568 Mwt and in accordance with the Technical Specifications will assure that the ECCS system will conform to the performance criteria of 10 CFR 50.46. Accordingly, until modifications are completed to achieve full compliance with 10 CFR 50.46, operation of the facility at power levels up to 2568 Mwt with appropriate operating procedures will not endanger life or property or the common defense and security.

By letter dated July 14, 1978, the licensee submitted a proposed modification to the HPI system to eliminate the need for operator action outside the control room. Based on our review and Safety Evaluation, dated December 13, 1978, of the licensee's July 14 submittal we concluded that upon installation of the modification and upon completion of testing to verify the required flow split, the emergency core cooling system will fully conform to the requirements of 10 CFR 50.46. The Evaluation provides a description of the modification. While Oconee Unit No. 2 does not comply with our requirements for ECCS, appropriate actions, as previously described, have been taken to mitigate the consequences of any accidents at this plant. The Technical Specifications will provide protection against the subject small break LOCA and will bring plant operation wholly in conformance with 10 CFR 50.46. These Technical Specifications will be in force only for the brief interval of time until the proposed modifications of the ECCS are completed. The public interest is served in that by issuing this exemption for Unit No. 2 a significant power reduction with no concomitant increase in safety is avoided. Such a power reduction could affect system reliability, cause unemployment and increase consumer power costs in the area.

**III.**

Copies of the following documents are available for inspection at the Commission's Public Document Room

at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, South Carolina.

(1) The application for exemption dated September 18, 1978, and

(2) This Exemption in the matter of Duke Power Company, Oconee Nuclear Station, Unit No. 2.

**IV.**

Wherefore, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Oconee Unit 2 this exemption supersedes the conditions of the Commission's Order for Modification of License dated April 26, 1978, and is conditioned as follows:

(1) The licensee has submitted the plans and schedules to modify the facility to eliminate reliance on prompt operator action described herein. Additional guidance in these areas has been provided by the NRC letter of September 26, 1978 to Duke Power Company. The staff approved the modification by letter dated December 13, 1978.

(2) The licensee shall complete such modifications prior to startup after the next scheduled refueling outage or during any scheduled outage of sufficient duration and occurring after six months from December 13, 1978 whichever occurs first.

(3) This exemption shall be terminated upon completion of the modifications in accordance with the conditions above.

Dated at Bethesda, Maryland this 15th day of December 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, JR.,  
Director, Division of Operating Reactors, Office of Nuclear Regulation.

(FR Doc. 78-36294 Filed 12-28-78; 8:45 am)

[7590-01-M]

(Docket No. 70-2623)

**DUKE POWER CO.**

**Negative Declaration Regarding Proposed Amendment to Materials License SNM-1773**

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Materials License No. SNM-1773 issued to Duke Power Company. The proposed amendment would authorize the receipt and storage of Oconee Nuclear Station spent fuel at the McGuire facility located in Mecklen-



burg County, North Carolina, in accordance with the licensee's application for amendment dated March 9, 1978. Notice of proposed issuance of this amendment to Materials License SNM-1773 offering an opportunity for public participation in connection with this action was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32905). In response to Petitions filed for Leave to Intervene, hearings will be held pursuant to 10 CFR Part 2. This will be the subject of a separate notice and will be published in the FEDERAL REGISTER at a later date.

The U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, has prepared an environmental impact appraisal in accordance with 10 CFR Part 51 for the proposed amendment and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact significantly affecting the quality of the human environment attributable to the proposed action. A negative declaration to this effect is appropriate.

The Environmental Impact Appraisal dated December 1978, and the application for amendment dated March 9, 1978, are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local Public Document Rooms at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, N.C. 28202; and at the Oconee County Library, 201 South Spring Street, Walhalla, S.C. 29691. The Safety Evaluation Report (when available) will also be open for public inspection at the above locations. Copies of the Environmental Impact Appraisal and the Safety Evaluation Report may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 22nd day of December 1978.

For the Nuclear Regulatory Commission.

L. C. ROUSE,  
Acting Chief, Fuel Reprocessing  
and Recycle Branch, Division  
of Fuel Cycle and Material  
Safety.

(FR Doc. 78-36295 Filed 12-28-78; 8:45 am)

# [7590-01-M]

(Docket No. 50-335)

## FLORIDA POWER AND LIGHT CO.

### Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. DPR-67 issued to Florida Power & Light Company (the licensee), which revised Technical Specifications for operation of St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Fla. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to increase the minimum required volume of water in the Refueling Water Tank and to allow an increase in the coolant temperature at which shutdown cooling is initiated.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated February 24 and 27, 1978, (2) Amendment No. 28 to License No. DPR-67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Fla. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 14th day of December 1978.

For the Nuclear Regulatory Commission.

GERALD B. ZWETZIG,  
Acting Chief, Operating Reactors  
Branch No. 4, Division of  
Operating Reactors.

(FR Doc. 78-36296 Filed 12-28-78; 8:45 am)

# [7590-01-M]

## Atomic Safety and Licensing Appeal Board

(Docket Nos. STN 50-556 and STN 50-557)

### PUBLIC SERVICE CO., ET AL.

#### Order

DECEMBER 22, 1978.

In the matter of Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative, Inc. (Black Fox Station, Units 1 and 2).

The Board will hear argument in this case at 10 a.m. Wednesday, January 31, 1979, in the Commission's Public Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland. The time allotted for presentation of argument and notice of matters which the Board particularly wishes addressed will be announced subsequently. Each party shall write the Board Secretary by January 17, 1979, giving the name, address and telephone number of counsel who will present oral argument on its behalf.

It is so ordered.

For the Appeal Board.

ELEANOR E. HAGINS,  
Secretary to the  
Appeal Board.

(FR Doc. 78-36297 Filed 12-28-78; 8:45 am)

# [7590-01-M]

(Docket Nos. 50-522 and 50-523)

## PUGET SOUND POWER AND LIGHT CO., ET AL. (SKAGIT NUCLEAR POWER PROJECT, UNITS 1 AND 2)

### Order for Conference

The board is hereby calling a conference of counsel for all of the parties, including intervenors, for Tuesday and Wednesday, January 16 and 17, 1979, beginning each day at 9:30 a.m. The conference will be held at Room 3086, New Federal Building, 915 Second Avenue, Seattle, Washington 98174.

The purpose of the conference is to take stock of the status of the proceeding, to facilitate planning for the next steps in the proceeding by the parties and the board, and to provide orientation to the board's new chairman. The board is conscious of the lapsed time since the beginning of the proceeding and the extensive evidentiary hearings which have already

taken place and is determined to move ahead to a conclusion of the proceeding with all deliberate speed.

So that the conference may be of maximum benefit, counsel for each party is requested to submit to the board, in specific terms, a list of the principal issues, together with major subordinate issues thereunder, which require board decision. The list of principal issues should be divided into three categories according to submitting counsel's opinion, namely, (1) issues presently ripe for board decision with no need for further evidentiary hearing; (2) issues on which further evidentiary hearing is required before board decision is appropriate; and (3) issues on which no evidentiary hearings have been held. Citations to the record of evidence on each principal or major subordinate issue about which there has been evidence of record should be included in the listing of issues.

Counsel for the new intervenors, namely, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Tribal Community are requested to define with reasonable specificity the contentions within the scope of the present proceeding which they wish to be adjudicated by the board. The enumeration of such contentions should include citations of evidence pertinent thereto which may already be in the record of the proceeding.

The foregoing requested material should be forwarded to the members of the board so that it may be in the hands of the board members on or before Wednesday, January 11, 1979.

On Thursday, January 18, 1979, the board members anticipate a visit to the proposed plant site with the applicant as their host. Representatives of parties may join the visit but there is no requirement for doing so. Arrangements for the visit will be discussed at the scheduled conference.

The mailing addresses and telecopy communication terminals of the board members are:

Mr. Gustave A. Linenberger, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, FTS-8-634-3319 or (202) 634-3319. For verification of receipt of telecopied messages, either of above numbers with last four numerals changed to 3317.

Dr. Frank F. Hooper, School of Natural Resources, University of Michigan, Ann Arbor, Michigan 48109. Telex or TWX 810-223-6066. For verification of receipt of telecopied messages, (313) 764-7235.

Valentine B. Deale, Esq., Suite 504, 1001 Connecticut Avenue NW., Washington, D.C. 20036, (202) 331-1243. For verification of receipt of telecopied messages, (202) 296-6100 and ask for Miss Martha Moody.

Dated this 22nd day of December 1978 at Washington, D.C.

ATOMIC SAFETY AND  
LICENSING BOARD.  
VALENTINE B. DEALE,  
Chairman.

(FR Doc. 78-36298 Filed 12-28-78; 8:45 am)

# [7590-01-M]

(Docket No. 50-397 OL)

## WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 2)

### Order Relative to a Prehearing Conference

Take notice, because of scheduling problems, the date of the prehearing conference to consider petitions filed in this proceeding has been changed from January 11, 1979 to January 25, 1979. The place of the hearing is as follows: Federal Building, Auditorium, 825 Jadwin Avenue, Richland, Washington.

The proceeding will commence at 9 a.m. (local time). The public is invited to attend. No limited appearance statements will be heard at this particular conference.

It is so ordered.

Dated at Bethesda, Maryland, this 20th day of December, 1978.

For the Atomic Safety and Licensing Board for the Review of Petitions.

RICHARD F. COLE,  
Member.

(FR Doc. 78-36299 Filed 12-28-78; 8:45 am)

# [7590-01-M]

## REGULATORY GUIDE

### Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The new guide is Regulatory Guide 3.44, "Standard Format and Content for the Safety Analysis Report To Be Included in a License Application for The Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (Water-Basin Type)." It identifies for the applicant the information needed in a Safety Analysis Report to evaluate the safety aspects of the proposed independent spent fuel storage installation (ISFSI) and the plans for its use. Review of this information in applications for licenses for the stor-

age of spent fuel in an ISFSI in accordance with proposed 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation," should enable the NRC staff to provide reasonable assurance that the installation will not adversely affect the health and safety of the public and its operating personnel. The proposed regulation was published in the FEDERAL REGISTER on October 6, 1978 (43 FR 46309).

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 3.44 will, however, be particularly useful in evaluating the need for an early revision if received by February 28, 1979.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 21st day of December 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,  
Acting Director

Office of Standards Development.

(FR Doc. 78-36290 Filed 12-28-78; 8:45 am)

# [3110-01-M]

## OFFICE OF MANAGEMENT AND BUDGET

### CLEARANCE OF REPORTS

#### List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 20, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.



The list includes:  
The title of each request received;  
The name of the agency sponsoring the proposed collection of information;  
The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;  
The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

#### NEW FORMS

##### DEPARTMENT OF ENERGY

Report of First Sales of Natural Gas Under Section 109 of the Natural Gas Policy Act, Other Categories of Natural Gas PERC-122  
Annually  
Natural Gas Companies  
100 responses; 25 hours  
Hill, Jefferson B., 395-5867

Industrial Energy Consumption ID Survey EIA-117  
Single-Time  
Major energy consuming firms  
1,000 responses; 4,000 hours  
Hill, Jefferson B., 395-5867

##### NATIONAL ENDOWMENT FOR THE ARTS

Application Form for Listing in NEA/Artists-in-Schools  
Theatre Resources Directory  
Annually  
Theatre artists and theatre companies  
100 responses; 50 hours  
Laverne V. Collins, 395-3214

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control  
Nosocomial Infection Surveillance and Control Practices  
Single-Time  
Hosp. partici. in nat. nosocomial infections study  
85 responses; 170 hours  
Richard Eisinger, 395-3214

##### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development and Research

Community Development Block Grant Evaluation: First Year Household Survey  
Single-Time  
Households in 10 cities  
5,000 responses; 2,500 hours  
Strasser, A., 395-6132

##### DEPARTMENT OF LABOR

Employment and Training Administration  
Monthly Enrollment Levels of On-Board PSE CETA Participants ETA-17  
Monthly  
State and local agencies  
5,520 responses; 1,380 hours  
Budget Review Division, 395-4775

#### REVISIONS

##### DEPARTMENT OF AGRICULTURE

Food and Nutrition Service  
Summer Food Service Program for Children  
FNS-80  
On occasion  
State agencies and service instit. (sponsors)  
11,788 responses; 23,138 hours  
Ellett, C. A., 395-6132

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Education Application for Comprehensive Program of the Fund for the Improvement of Postsecondary Education  
ASE-0001, 0002, 0003  
Annually  
Postsecondary education institutions  
2,500 responses; 66,000 hours  
Laverne V. Collins, 395-3214

##### DEPARTMENT OF LABOR

Employment and Training Administration  
The Job Corps Health Management Information System MA 6-124, 125, 127, 128  
Monthly  
Job Corps centers health units  
1,116 responses; 1,736 hours  
Strasser, A., 395-6132

##### DEPARTMENT OF TRANSPORTATION

Federal Highway Administration  
Federal-Aid Highway Construction Contractor's Annual EEO Report PR-1391  
On occasion  
Highway construction contractors and subcontractors  
3,700 responses; 13,000 hours  
Geiger, Susan B., 395-5867

#### EXTENSIONS

##### DEPARTMENT OF AGRICULTURE

Farmer's Home Administration  
Farm and Home Plan  
FHMA 431-2

On occasion  
FHA loans  
125,000 responses; 125,000 hours  
Ellett, C. A., 395-6132

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development  
National Study on Selected Issues of Social Services to Children and Their Families  
Single-Time  
Public child welfare agencies  
11,480 responses; 5,740 hours  
Reese, B. F., 395-3211

##### DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration  
FAA Landing Facilities Information Request on Airports, Heliports, Seaplane Bases and Stolports FAA 5010-2 and 5010-5  
On occasion  
Owners of airports not open to the public  
8,000 responses; 2,750 hours  
Geiger, Susan B., 395-5867

DAVID R. LEUTHOLD,  
*Budget and Management Officer.*

[FR Doc. 78-36328 Filed 12-28-78; 8:45 am]

#### [8410-01-M]

##### OHIO RIVER BASIN COMMISSION

##### OHIO MAIN STEM WATER AND RELATED LAND RESOURCES STUDY REPORT AND ENVIRONMENTAL IMPACT STATEMENT

Availability of Adopted Study Report and Associated Plans and Associated Comprehensive Coordinated Joint Plans (CCJP's) for the Upper Ohio Main Stem, Middle Ohio Main Stem and Lower Ohio Main Stem Portions of the Ohio River Basin

Pursuant to Section 204(3) of the Water Resources Planning Act of 1965 (PL 89-80), the Ohio River Basin Commission has adopted the Ohio Main Stem Water and Related Land Resources Study Report and Environmental Impact Statement and associated Comprehensive Coordinated Joint Plans (CCJP's) for the Upper Ohio Main Stem, Middle Ohio Main Stem and Lower Ohio Main Stem major portions of the Ohio River Basin for transmittal to the President and the Congress through the Water Resources Council.

Copies are available on request from the Ohio River Basin Commission, 36 E. Fourth Street, Cincinnati, Ohio 45202.

For the Ohio River Basin Commission:

FRANK M. ALEXANDER,  
*Vice-Chairman.*

[FR Doc. 78-36237 Filed 12-28-78; 8:45 am]

#### [1505-01]

##### Small Business Administration

[Declaration of Disaster Loan Area No. 1551]

##### LOUISIANA

##### Declaration of Disaster Loan Area

##### Correction

In FR Doc. 78-35435 appearing at page 59561 in the issue for Thursday, December 21, 1978 the Declaration of Disaster Loan Area was incorrectly stated as "551." It should be corrected to read "1551."

#### [4710-07-M]

##### DEPARTMENT OF STATE

##### Office of the Secretary

[Public Notice CM-8/139]

##### SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

##### Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Tuesday, January 16, 1979 in Room 8236/38, of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of this meeting will be to review the Nineteenth and prepare for the twentieth Session of the Ship Design and Equipment Subcommittee of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for March 12-16, 1979 in London. The agenda includes consideration of the Delegation and Subcommittee reports for the Nineteenth Session and discussion of the following for the Twentieth Session: revision of IMCO Resolution A.325; special purpose ships/offshore supply vessels; noise level on board ships; maneuverability of ships; diving system; completion of the Code for Mobile Offshore Drilling Units; and nuclear merchant ships.

Requests for further information should be directed to Captain R. L. Brown, United States Coast Guard, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone number (202) 426-2167.

The Chairman will entertain comments from the public as time permits.

Dated: December 18, 1978.

JOHN LLOYD, III,  
*Deputy Director,  
Office of Maritime Affairs.*

[FR Doc. 78-36238 Filed 12-28-78; 8:45 am]

#### [4710-07-M]

[Public Notice CM-8/140]

##### SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

##### Meeting

The working group on bulk chemicals of the Subcommittee of Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on January 18, 1979 in Room 8238 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of this meeting will be to discuss the agenda for the fifth session of the IMCO Subcommittee on Bulk Chemicals. Agenda items of particular importance include:

Extension of the Bulk Chemical Code to cover pollution aspects.

Provision of reception facilities for noxious liquid substances.

Procedures and arrangements for the discharge of noxious liquid substances.

Ships used for carrying substances under Annex I and Annex II of the 1973 MARPOL Convention.

Evaluation of the hazards of mixed or diluted substances in relation to the Bulk Chemical Code and the 1973 MARPOL Convention.

Carriage of bulk chemicals in deep tanks of dry tanks of dry cargo ships. Review and updating of the Gas Carrier Code.

Requests for further information on the meeting should be directed to Mr. F. Wybenga, United States Coast Guard, telephone (202) 426-1217.

The Chairman will entertain comments from the public as time permits.

Dated: December 20, 1978.

RICHARD K. BANK,  
*Chairman,  
Shipping Coordinating  
Committee.*

[FR Doc. 78-36268 Filed 12-28-78; 8:45 am]

#### [4710-07-M]

[Public Notice CM-8/141]

##### SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

##### Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea (SOLAS), a part of the Shipping Coordinating Committee, will conduct an open meeting at 1:30 p.m. on Thursday, January 18, 1979 in Room 8442 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twentieth Session of the Subcommit-

tee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 26-30, 1979. In particular, the working group will discuss the following topics:

Survival craft radio equipment.  
Operational requirements for future EPIRBs.

Operational standard for shipboard radio equipment.

Maritime distress system.

Requests for further information should be directed to Lieutenant R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C., telephone (202) 426-1345.

The Chairman will entertain comments from the public as time permits.

Dated: December 20, 1978.

RICHARD K. BANK,  
*Chairman, Shipping  
Coordinating Committee.*

[FR Doc. 78-36269 Filed 12-28-78; 8:45 am]

#### [4510-29-M]

#### [4830-01-M]

##### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

##### DEPARTMENT OF LABOR

##### Pension and Welfare Benefit Programs

[Application No. D-1007]

##### EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Everybods Inc. Employee Profit Sharing Plan and Trust

AGENCIES: Department of the Treasury/Internal Revenue Service. Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code) and from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the loan of \$40,000 from the Everybods Inc. Employee Profit Sharing Plan (the Plan) to Everybods Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before January 29, 1979.

ADDRESS: All written comments and requests for a hearing (at least six



copies) should be sent to: Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attention: EEP:PT-1, Application No. D-1007. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, NW, Washington, DC 20224, and at the public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW, Washington, DC 20216.

#### FOR FURTHER INFORMATION CONTACT:

Pete Knox of the Internal Revenue Service, 202-566-8761. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Agencies of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (B) through (E) of the Code, and from the restrictions of section 406(a)(1)(B) through (D) and section 406(b)(1) and 406(b)(2) of the Act. The proposed exemption was requested in an application filed by the Employer and the trustees of the Plan pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722 and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

#### SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

1. The Employer owns and operates a pizza restaurant and another restaurant in Atlanta, Georgia. Andrew S. Kurlansky is the secretary-treasurer of the Employer, owns 50 percent of its outstanding common stock and is a trustee of the Plan's Trust (the Trust). Philip G. Paymer is the president of the Employer, owns 50 percent of its outstanding stock and is the other trustee of the Trust. The Employer has assets of \$186,338, no long term liabilities and its retained earnings exceed \$121,000.

2. The Plan had 37 participants as of June 30, 1978. The Trust had assets of \$102,134 as of June 30, 1978, the end of the Plan's year. The Plan expects to receive further annual contributions of \$12,000 to \$15,000. Payments of Plan benefits during the period of the loan are expected to be negligible.

3. Andrew S. Kurlansky and Philip G. Paymer are responsible for all Trust investment decisions. The overall consideration in past investment decisions has been to find the highest yielding, most secure investments. Consequently, almost all of the Trust assets have been invested in United States government obligations and in certificates of deposit yielding between 7 1/4 and 7 3/4 percent per year.

4. The Employer proposes to borrow \$40,000 from the Trust, to be repaid in 20 quarterly installments of \$2,814.44, reflecting an annual interest rate of 14 percent. The loan will be on the same terms that would be offered by a major local bank (and will utilize standard local bank forms), except that the interest to be charged is approximately one to two percent more than a bank would require and, in addition, the loan will be personally guaranteed by Andrew S. Kurlansky (whose net worth as of December 31, 1977 is represented to be in excess of \$162,000) and by Philip G. Paymer (whose net worth as of December 31, 1977 is represented to be in excess of \$99,000). The loan will be evidenced by a negotiable promissory note and will be secured by new pizza restaurant equipment and fixtures worth approximately \$91,820. The security interest will be perfected by filing a Uniform Commercial Code security agreement with the county clerk of the county where the fixtures will be situated. The collateral will be kept fully insured against fire, theft or other casualty, such insurance to inure to the benefit of the Trust. The Employer represents that the market value of the collateral is not expected to drop below approximately twice the outstanding loan balance due at any time. The Employer further represents that the collateral is easily resalable.

5. The Employer will appoint a local banker to be a separate loan trustee for the Trust assets involved in the proposed loan. The independent loan trustee will have the responsibility and power to enforce and collect the loan in the event of any default.

#### NOTICE TO INTERESTED PERSONS

Written notice shall be given to all interested persons. The interested persons include the Plan participants. The manner of the notice shall be by posting, on the employee's bulletin board that is regularly used to inform employees of important events, a copy of this notice of pendency as published in the FEDERAL REGISTER with explanatory notes attached summarizing the exemption requested, informing the interested persons of their right to comment on such exemption, and informing the interested persons of the period for comments to be received.

The notice shall be posted within 10 days after the notice of pendency of such exemption is published in the FEDERAL REGISTER.

#### GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in the interest or disqualified person from certain other provisions of the Code and the Act, including any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposal exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

#### WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a

hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

#### PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. If the exemption is granted, the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) through (E) of the Code, and the restrictions of section 406(a)(1)(B) through (D) and 406(b)(1) and 406(b)(2) of the Act, shall not apply to the loan of \$40,000 from the Trust to the Employer. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, DC, this 20th day of December, 1978.

FRED J. OCHS, Director,  
Employee Plans Division,  
Internal Revenue Service.

IAN D. LANOFF,  
Administration of Pension and  
Welfare Benefit Programs,  
Labor-Management Services  
Administration, U.S. Department  
of Labor.

[FR Doc. 78-35983 Filed 12-28-78; 8:45 am]

[4510-29-M]  
[4830-01-M]

[Application No. D-654]

#### EMPLOYEE BENEFIT PLANS

Proposed Exemption to Certain Transactions  
Involving the Howell Instruments, Inc. Employee Profit Sharing and Retirement Plan

AGENCIES: Department of Labor, Department of Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the

Code). The proposed exemption, if granted, would exempt the sale of shares of stock of Commerce Financial Corporation (CFC) from the Howell Instruments, Inc. Employee Profit Sharing and Retirement Plan (the Plan) to CFC. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, CFC and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor by January 29, 1979. The effective date of the proposed exemption will be the date on which the exemption is granted.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-654. The application for exemption, all comments relating to the proposed exemption, and any requests for a hearing will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216, and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

#### FOR FURTHER INFORMATION CONTACT:

Ronald D. Allen of the Department of Labor, (202) 523-8883. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Bank of Commerce of Fort Worth, Texas (the Bank), the trustee of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

#### SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with

the Agencies for the complete representations of the applicant.

The Plan is a profit sharing plan which holds 4,810 shares of CFC common stock. CFC is a bank holding company of which the trustee Bank is a wholly-owned subsidiary. The Bank as trustee requests an exemption in order to sell all shares of CFC stock held by the Plan to CFC. The proposed sale would be for a cash consideration of \$59.00 per share. CFC would purchase the stock as treasury shares, without intention of any subsequent offering of the shares to the public.

The Plan originally purchased 4,810 shares of stock of the trustee Bank on May 9, 1972, which shares subsequently were exchanged for the 4,810 shares of CFC stock. The CFC stock represents 8.24 percent of the assets of the Plan, the largest single stock or bond holding in the Plan portfolio. CFC stock has a present yield of 2.69 percent annually, based on a dividend of \$1.40 per share.

Sale of the CFC stock is sought since the trustee has determined that it is not desirable for the Plan to retain 8.24 percent of its investment portfolio invested in basically non-marketable assets with a low rate of return. In addition, the Plan's investment in the CFC stock violates the diversification guidelines set by the Bank with respect to its management of trust accounts. Furthermore, the Plan trustee believes that continued holding of CFC stock precludes alternative investment of Plan assets.

CFC stock is considered non-marketable since all issued and outstanding shares of such stock are held by only 183 shareholders. A majority of the stock is held by officers and directors of CFC. Because of this thin market for CFC shares, there are few potential purchasers for the stock held by the Plan. The CFC stock was acquired by the Plan from CFC without registration under the Securities Act of 1933 under an exemption therefrom. Therefore, the shares are restricted and cannot be sold without compliance with the registration requirements of the Securities Act of 1933, or in reliance upon an exemption therefrom. Any such registration would not be feasible because of costs which would be incurred, the limited number of shares involved, and the burden of developing all the necessary information required by the registration statement. If the Plan attempted to sell the CFC stock pursuant to a "private offering" exemption from registration, it is uncertain whether sufficient interest could be generated for the 4,810 CFC shares. Moreover, even if the stock could be sold in a private placement, the sale of CFC stock to individuals who are likely buyers probably would result in prohibited transactions



under the Act and the Code, because many of such individuals would be parties in interest and disqualified persons with respect to the Plan.

Shares of CFC stock are not actively traded. During 1977 there were seven trades involving a total of 1,756 shares. All seven trades were made by CFC at \$49 per share. CFC has been the primary purchaser of CFC stock, doing so in order to create a reserve of treasury shares with which to fund a stock option program.

The proposed purchase price of \$59.00 per share is represented to be the current fair market value of the stock. The price is based upon an independent appraisal made by Stephen's Inc., an investment banking firm which is completely independent of CFC. Stephen's Inc. was retained by CFC in September, 1976 to make such an appraisal, and updated its initial appraisal in April 1978.

#### NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be posted conspicuously in the administrative office of the Plan for at least thirty days, beginning within fifteen days after publication of the notice of pendency of exemption in the FEDERAL REGISTER. Additionally, copies of the FEDERAL REGISTER notice will be provided to all Plan participants by first class mail within fifteen days of such publication in the FEDERAL REGISTER.

#### GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the

Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

#### WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available with the application for exemption at the address set forth above.

#### PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of 4,810 shares of Commerce Financial Corporation stock to Commerce Financial Corporation for \$59.00 per share, provided that this amount is not less than fair market value of the stock at the time of the sale. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1978.

IAN D. LANOFF,  
Administrator for Pension and  
Welfare Benefit Programs,  
Labor-Management Services  
Administration, U.S. Department  
of Labor.

FRED J. OCHS,  
Director, Employee Plans  
Division  
Internal Revenue Service.

[FR Doc. 78-35981 Filed 12-28-78; 8:45 am]

[4510-29-M]  
[4830-01-M]

[Application No. 0-672]

#### EMPLOYEE BENEFIT PLANS

Proposed Exemption for Certain Transactions  
Involving Rasmussen Equipment Company  
Profit Sharing Plan

AGENCIES: Department of Labor,  
Department of the Treasury/Internal  
Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale by the Rasmussen Equipment Company Profit Sharing Plan (the Plan) of real property to Rasmussen Investment, Ltd. (the Partnership), a party in interest. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Rasmussen Equipment Company (the Employer), the Partnership and other persons participating in the proposed transaction.

DATES: Written comments and request for a public hearing must be received by the Department of Labor on or before January 29, 1979. The exemption will be effective on the date of the final grant.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-672. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216, and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

#### FOR FURTHER INFORMATION CONTACT:

Ronald D. Allen of the Department of Labor, 202-523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of an application for exemption from the restrictions of section 406(a)(1) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

#### SUMMARY OF FACTS AND REPRESENTATIONS

The application and related documents contain facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to these documents on file with the Agencies for the complete representations of the applicants.

Richard and Robert Rasmussen each own a 50% interest in the Employer, which is the Plan sponsor. Richard is the administrator of the Plan and the person responsible for making investment decisions for the Plan. Richard and Robert Rasmussen are participants in the Plan and each owns a 50% interest in the Partnership, which was formed for the purpose of buying and developing real property.

The Plan owns to parcels of undeveloped real property in the Salt Lake Industrial Park (Industrial Park) which it purchased on September 1, 1973 for \$105,863. All payments on the land were paid by the Employer with company checks, and the amounts were deducted by the Employer as contributions to the Plan. It was understood at the time the property was purchased that the Plan would construct a building on the property and that the land and the building would be leased to the Employer for its operations. As of June 30, 1977, the real property in the Industrial Park represented 52% of Plan assets. According to an independent appraisal dated

March 7, 1977, the property was valued at \$190,000.

The contract between the Plan and the Industrial Park contained a restrictive covenant requiring the Plan (as owner of the property) to commence construction of a building on the property within three years from September 1, 1973. The Plan may not sell the property prior to the construction of a building. If construction had not begun within that time period, the owners of the Industrial Park have an option to refund the purchase price plus interest and enter into possession of the property. This covenant is designed to remove the land from speculative sales without improvements and to assure development within a reasonable period of time.

When the Act became effective, the Plan was prohibited by the restrictions of the Act and the Code from leasing the property or the proposed building to the Employer. Because the property could not be sold to a third party prior to the construction of a building thereon because it could not be determined what type of building could be built and sold without incurring difficulties in the disposition it was decided that the Partnership should purchase the property from the Plan and lease the developed property to the Employer. The owners of the Industrial Park have agreed to allow the Plan to sell the land to the Partnership and have extended the deadline leaving the date open to begin construction on the property.

The sale of the property by the Plan to the Partnership is proposed to be for \$190,000 cash. The Plan will not pay a sales commission in connection with the sale.

#### NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be posted conspicuously in the administrative office of the Plan for at least 30 days, beginning within 15 days of publication of the notice of pendency in the FEDERAL REGISTER. In addition, copies of the notice of pendency as published in the FEDERAL REGISTER will be provided to all Plan participants by first class mail within 15 days of publication in the FEDERAL REGISTER.

#### GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

The price of \$190,000 is based upon the independent appraisal referred to above. However, in view of the length of time which has passed since that appraisal was made, the proposed exemption provides that the Partnership must pay the greater of either \$190,000 or the fair market value at the time of the sale.

408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for exclusive benefit of the employees of the employer maintaining the plan and of their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

#### WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

#### PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the



Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of section 408(a)(1) and 408(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan to the Partnership of the real property located in the Industrial Park for \$190,000, provided that this amount is not less than the fair market value of the property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1978.

IAN D. LANOFF,  
Administrator of Pension and  
Welfare Benefit Programs,  
Labor-Management Services  
Administration, U.S. Department  
of Labor.

FRED J. OCHS, Director,  
Employee Plans Division,  
Internal Revenue Service.

[FR Doc. 78-35982 Filed 12-28-78; 8:45 a.m.]

#### [4810-22-M]

Office of the Secretary

#### BICYCLE TIRES AND TUBES FROM THE REPUBLIC OF CHINA

Determination of Sales at not Less Than Fair  
Value and Discontinuance of Antidumping  
Investigation

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Not Less Than Fair Value and Discontinuance of Antidumping Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that, with the exception of the merchandise produced by two companies, bicycle tires and tubes from the Republic of China, are not being sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921. In the case of two producers the investigation is being discontinued based on minimal margins and assurances of no future sales at less than fair value.

EFFECTIVE DATE: December 29, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer,  
U.S. Customs Service, Office of Operations,  
Duty Assessment Division,  
Technical Branch, 1301 Constitution  
Avenue, N.W., Washington, D.C.  
20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On January 13, 1978, information was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), from counsel acting on behalf of the Carlisle Tire and Rubber Co., of Carlisle, Pennsylvania, indicating that bicycle tires and tubes from the Republic of China are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of February 23, 1978 (43 FR 7496).

A "Withholding of Appraisalment Notice, Tentative Exclusion From and Tentative Discontinuance of Antidumping Investigation" was published in the FEDERAL REGISTER of September 18, 1978 (43 FR 41451).

For purposes of this notice the term "bicycle tires and tubes" means pneumatic bicycle tires, and tubes therefor, of rubber or plastics, whether such tires and tubes are sold together as units or separately.

#### DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On the basis of information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)) I hereby determine that bicycle tires and tubes from the Republic of China, other than that merchandise produced by Cheng Shin Industrial Co., Ltd. and Kenda Rubber Tire Corp., are not being sold at less than fair value. In the case of both Cheng Shin Industrial Co., Ltd., and Kenda Rubber Tire Corp., the margins were found to be minimal and assurances of no future sales at less than fair value have been received. Therefore, with respect to these two firms, I hereby discontinue the antidumping investigation.

#### STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED:

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that approximately 86 percent of the imports of the subject merchandise

from the Republic of China during the period of the investigation were manufactured by the following firms:

1. Hwa Fong Rubber Industrial Co., Ltd.
2. Cheng Shin Rubber Industrial Co., Ltd.
3. Kenda Rubber Tire Corp., Ltd.
4. Nan Kang Rubber & Industrial Corp., Ltd.

The investigation was therefore limited to sales by these four firms.

b. *Basis of Comparison.* For purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison, except for Nan Kang, is between purchase price and the adjusted home market price of such or similar merchandise. With respect to Nan Kang, the proper basis of comparison is between purchase price and third country price of such or similar merchandise. Purchase price, as defined in § 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States by the four firms were made to unrelated customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used for fair value purposes when such or similar merchandise was sold in the home market in sufficient quantities to provide an adequate basis of comparison.

Sales for exportation to countries other than the United States, as defined in § 153.3, Customs Regulations (19 CFR 153.3), were used for Nan Kang since such or similar merchandise was not sold in the home market. In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States, home market sales, and third country sales during the period September 1, 1977, through February 28, 1978.

c. *Purchase Price.* For purposes of this determination, purchase price has been calculated on the basis of sales prices to unrelated United States purchasers, and to trading companies in the Republic of China which export the merchandise to the United States, with deductions made, where applicable, for c.i.f. charges, inland freight charges, commissions, brokerage charges, bank charges and contributions to the Taiwan Rubber Association. An addition was made, where applicable, for duty drawback of Republic of China customs duty paid on imported material used to manufacture the tires and tubes exported to the U.S. during the investigatory period. Additions were also made for the amount of commodity, stamp and education taxes imposed on sales of this merchandise domestically, which taxes were either rebated or not collected upon exportation. With regard to Cheng Shin it was discovered that inadvertently the adjustment for the commodity tax, discussed above, had been omitted from the fair value calculations used in the Withholding of Appraisalment Notice. This adjustment has been included for purposes of this determination.

d. *Home Market Price.* For the purpose of this determination, the home market price has been calculated on the basis of the selling prices to unrelated purchasers in the Republic of China. Deductions were made, where applicable, for inland freight. Adjustments were made, where applicable, for differences in credit, packing and merchandise and for advertising expenses and rejected merchandise.

The adjustments for differences in credit related to the differences in interest costs incurred by the sellers due to differences in the time within which payment was received on sales in the home market as compared with export sales. The adjustment for differences in packing related to difference costs associated with packing the merchandise for export and for home consumption. Those adjustments were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

The adjustments for differences in merchandise concerned sales by Cheng Shin. Those differences involved standard variances in tread and in color of sidewall on certain tires and in material on certain tubes sold both in the United States and in the home market. The adjustment factor was based upon the differences in the negotiated prices for the identical, differentiated tires and tubes sold in the home market. This adjustment was made in accordance with § 153.11 of the Customs Regulations (19 CFR 153.11).

The adjustment for advertising expenses was made in the case of Cheng Shin for certain advertising costs assumed by that manufacturer on behalf of its distributors. The adjustment for rejected merchandise concerned a deduction for merchandise returned by home market customers in the case of sales by two manufacturers, Cheng Shin and Hwa Fong. These manufacturers did not incur similar claims for rejected merchandise on sales to the United States. Accordingly, adjustments for the foregoing expenses were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

Claims were made for adjustments under § 153.10, Customs Regulations (19 CFR 153.10), for entertainment expenses and bad debt expenses incurred in the home market.

A claim for an adjustment based upon differences in the quantity sold

in the two markets was made by Hwa Fong. However, the company did not provide any documentation to justify making the adjustment. Moreover, its prices did not appear to vary in direct relationship to quantities, as required under § 153.9(b) of the Customs Regulations (19 CFR 153.9(b)).

e. *Sales for Exportation to Countries Other Than the United States.* Since Nan Kang had no home market sales of such or similar merchandise to use as a basis of comparison with its exports to the United States, fair value was calculated on the basis of Nan Kang's export sales to the third country (Canada) in which the greatest number of Nan Kang's export sales to countries other than the United States were made. These sales were made from the same price list used for sales to the United States and in both cases actual sales prices appear to adhere to the price list.

f. *Results of Fair Value Comparisons.* Using the above criteria, the purchase price in certain instances was found to be lower than the home market price of such or similar merchandise. Comparisons were made on approximately 97 percent of the sales of the subject merchandise sold for export to the United States by the four investigated manufacturers during the period of investigation. Margins were found on approximately 7 percent of the sales compared, ranging from 0.05 percent to 21.4 percent and resulting in a weighted-average margin of 0.48 percent. Weighted-average margins over the total sales compared for each firm are as follows: Cheng Shin 0.79 percent, Kenda 0.5 percent and Hwa Fong 0.23 percent. No margins found on sales made by Nan Kang. The margins found on sales by Hwa Fong are determined to be *de minimis*. The margins found on sales by Kenda and Cheng Shin are considered to be *minimal* in relation to total volume of exports and formal assurances have been received from those manufacturers indicating that all future sales to the United States will be at prices which are not less than fair value.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to section 153.40, Customs Regulations (19 CFR 153.40).

The order to withhold appraisalment on the subject merchandise from the Republic of China, cited above and published in the FEDERAL REGISTER on September 18, 1978 (43 FR 41451), is hereby terminated, effective December 29, 1978.

This determination and discontinuance is being published pursuant to §§ 153.33(d) and 153.34(d) of the Customs Regulations (19 CFR 153.33(d), 153.34(d)).

ROBERT H. MUNDHEIM,  
General Counsel  
of the Treasury.

DECEMBER 20, 1978.

[FR Doc. 78-36326 Filed 12-28-78; 8:45 am]

#### [4810-22-M]

#### BICYCLE TIRES AND TUBES FROM THE REPUBLIC OF KOREA

Antidumping; Determination of Sales at Not Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Determination of Sales at Not Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that bicycle tires and tubes from the Republic of Korea are being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of such or similar merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market. This proceeding is being referred to the United States International Trade Commission for a determination concerning injury to an industry in the United States.

EFFECTIVE DATE: December 29, 1978.

#### FOR FURTHER INFORMATION CONTACT:

Holly Kuga, Operations Officer,  
Duty Assessment Division, U.S. Customs Service, 1301 Constitution  
Avenue, N.W., Washington, D.C.  
20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On January 13, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of the Carlisle Tire & Rubber Co. of Carlisle, Pa. indicating a possibility that bicycle tires and tubes from the Republic of Korea are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of February 23, 1978 (43 FR 7496). A "Withholding of Appraisalment Notice" was published in the FEDERAL REGISTER of September 18, 1978 (43 FR 41449).



For purposes of this notice the term "bicycle tires and tubes" means pneumatic bicycle tires, and tubes therefor, of rubber or plastics, whether such tires and tubes are sold together as units or separately.

**FINAL DETERMINATION OF SALES AT LESS THAN FAIR VALUE.** On the basis of information developed in Customs' investigation and for the reasons noted below I hereby determine that bicycle tires and tubes from the Republic of Korea are being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

**STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED**

**A. SCOPE OF THE INVESTIGATION**

It appears that 100 percent of all imports of bicycle tires and tubes from the Republic of Korea were produced by Dae Yung Commercial Co., Ltd., Hung A Industrial Co., Ltd., and Korea Inoue Kasei Co., Ltd. The investigation was therefore limited to sales by these three producers.

**B. BASIS OF COMPARISON**

For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise on all investigated sales by Hung A and Dae Yung.

Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used for fair value purposes on these two manufacturers, since they sold in the home market sufficient quantities of such or similar merchandise to provide an adequate basis for comparison.

In the case of Korea Inoue Kasei, the proper basis of comparison is between purchase price and sales for exportation to countries other than the United States. Sales for exportation to countries other than the United States (Canada) were used in accordance with § 153.3 Customs Regulations (19 CFR 153.3) since no sales of such or similar merchandise were made in the home market.

Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for all three producers since the sales to the United States on which this determination is based were made to nonrelated customers.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States, in the home market, and to Canada during the period September 1, 1977, through February 28, 1978.

**C. PURCHASE PRICE**

For purposes of this determination, purchase price has been calculated on the basis of the f.o.b. price to unrelated U.S. importers. Sales were made to bicycle manufacturers and to replacement distributors in the United States.

Deductions were made, where applicable, on sales to both levels of trade for inland freight, wharfage costs, and customs brokerage. In accordance with section 203 of the Act (19 U.S.C. 162), an addition was made to purchase price for the rebate upon the exportation of the merchandise to the United States of customs duties, a defense tax and value-added taxes incurred on raw materials used in producing the goods.

**D. HOME MARKET PRICE**

For the purpose of this determination, the home market prices have been calculated on the basis of delivered prices to unrelated purchasers in the home market. With respect to both Hung A and Dae Yung, comparisons were made at the same commercial level of trade found in sales of the merchandise to the United States. In the "Withholding of Appraisement Notice," cited above, it was indicated that Dae Yung did not make sales to bicycle manufacturers in the home market. Therefore, because, at that time, a suitable basis could not be found for making a level-of-trade adjustment, sales to both bicycle manufacturers and replacement distributors in the United States were compared to sales to replacement distributors in the home market. However, it has now been determined that sales to bicycle manufacturers in the home market had been made during the period of investigation.

Adjustments were made, where applicable, to home market sales to replacement distributors for inland freight, rebates, bonuses, advertising, differences in credit, and defective merchandise. Sales to bicycle manufacturers in the home market were adjusted, where appropriate, for inland freight and defective merchandise.

Adjustments were made for rebates on home market sales by Dae Yung and Hung A because the rebates were properly linked to the volume of merchandise purchased by customers over a specified period of time and appear to have been consistently offered by both manufacturers. The adjustment made for bonuses in home market sales by Hung A related to the manufacturer's promotion of sales by distributors during a given period of time. The concept of bonuses is directly analogous to the basis on which rebates are given and was therefore allowed as a deduction from the home market price.

The adjustment for advertising expenses was made in the case of Dae

Yung for certain advertising costs assumed by that manufacturer on behalf of its replacement distributors. The adjustments for differences in credit related to the differences in interest costs incurred by Dae Yung due to differences in the time of receipt of payment on sales in the home market from replacement distributors as compared with payment on export sales. These adjustments were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

The adjustment for rejected merchandise concerned a deduction for merchandise returned by home market customers in the case of sales by Hung A. This manufacturer did not incur similar claims for rejected merchandise on sales to the United States. Accordingly, adjustments for the foregoing expense were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

Hung A claimed adjustments for differences in interest costs due to differences in credit terms and for advertising expenses incurred only in the home market on behalf of its replacement distributors under § 153.10, Customs Regulations (19 CFR 153.10). Insufficient information was presented to justify making an adjustment for differences in interest costs. Advertising claims were not supported with sufficient documentation to show a relationship to the specific sales under consideration and were disallowed.

Claims were made for adjustments under § 153.10, Customs Regulations (19 CFR 153.10), by Dae Yung and Hung A for entertainment expenses and bad debt expenses incurred in the home market. These claims have been denied because Treasury has held consistently that such expenses are overhead expenses and are therefore not directly related to the sales under consideration. In any event, sufficient documentation was not provided to allow these claims.

**E. SALES FOR EXPORTATION TO COUNTRIES OTHER THAN THE UNITED STATES**

Since Korea Inoue Kasei does not sell such or similar merchandise in the home market, fair value was calculated by comparing exports to the United States with Korea Inoue Kasei's sales to third countries (Canada) in accordance with § 153.3 Customs Regulations (19 CFR 153.3). Sales to Canada represented 61 percent of Korea Inoue Kasei's sales to third countries other than the United States. Adjustments were made for differences in packing costs and differences in commissions paid between the sales to Canada and the United States, where appropriate.

**F. RESULTS OF FAIR VALUE COMPARISONS**

Using the above criteria, purchase price in certain instances was found to

be lower than the home market price or sales price to countries other than the United States of such or similar merchandise.

Comparisons were made on 40 percent, 92 percent, and 82 percent of the sales made by Dae Yung, Hung A, and Korea Inoue Kasei, respectively. Together this represents 54 percent of the sales made to the United States during the period under consideration.

Margins were found ranging from 0.2 to 36.6 percent on sales by Dae Yung, from 1.2 to 65.2 percent on sales by Hung A, and from 0.3 to 15.9 percent on sales by Korea Inoue Kasei. Weighted-average margins over the total sales compared for each firm were approximately 3.4 percent for Dae Yung, 5.3 percent for Hung A and 7.2 percent for Korea Inoue Kasei.

The Secretary has provided an opportunity to known interested persons to present written or oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,  
General Counsel  
of the Treasury.

DECEMBER 21, 1978.

[FR Doc. 78-36327 Filed 12-28-78; 8:45 am]

[7035-01-M]

**INTERSTATE COMMERCE COMMISSION**

[Notice No. 236]

**MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS**

DECEMBER 19, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protes-

tant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

**MOTOR CARRIERS OF PROPERTY**

MC 1395 (Sub-11TA), filed November 8, 1978. Applicant: ALVAN MOTOR FREIGHT, INC., 3600 Alvan Road, Kalamazoo, MI 49001. Representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Grand Rapids and Clare, MI.: From Grand Rapids over U.S. 131 to junction with Michigan Highway 57, then over Michigan Highway 57 to its junction with U.S. Highway 27, then north on U.S. 27 to Clare and return over the same route, serving all intermediate points, except Greenville, and serving the off-route points of Alma, St. Louis, Winn, Weidman, Beal City, Vandercar, Delwin, Vernon Center, Rosebush and Leaton, restricted to traffic interlines at Grand Rapids, Kalamazoo or Detroit, MI., with other carriers, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): There are approximately (7) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: C. R. Flemming DS, ICC, 225 Federal Bldg., Lansing, MI. 48933.

MC 2202 (Sub-569TA), filed September 12, 1978, and published in the FEDERAL REGISTER issue of December 11, 1978, and republished as corrected this issue. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077

Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014.

Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting (1) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving all intermediate points and all points located in Hardin, Orange, Jefferson, Chambers, Liberty, Harris, Galveston, Fort Bend, Brazoria, Colorado, Wharton, Guadalupe, Bexar, Wilson, Karnes, Goliad, Refugio, Aransas, Atascosa, Frio, La Salle, McMullen, Live Oak, Bee, San Patricio, Nueces, Kleberg, Jim Wells, Duval, Webb, Zapata, Jim Hogg, Brooks, Kenedy, Willacy, Cameron, Hidalgo, Starr, Dewitt, Calhoun, Matagorda, Jackson, Lavaca, Gonzales, Victoria, Waller, Austin, Fayette, and Caldwell Counties, TX, as off-route points, (a)

between Beaumont, TX and Las Cruces, NM: From Beaumont over U.S. Hwy 90 to Houston, TX, then over U.S. Hwy 290 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Las Cruces, and return over the same route; (b) between McAllen, TX and Kingman, AZ: From McAllen over U.S. Hwy 281 to San Antonio, TX, then over U.S. Hwy 87 to Amarillo, TX, then over U.S. Hwy 66 to Kingman, and return over the same route; (c) between Houston, TX and Brownsville, TX: (1) From Houston over U.S. Hwy 90 to San Antonio, TX, then over U.S. Hwy 81 to junction U.S. Hwy 83, then over U.S. Hwy 83 to Brownsville, and return over the same route; (2) From Houston over U.S. Hwy 59 to junction U.S. Hwy 77, then over U.S. Hwy 77 to Brownsville, and return over the same route; (d) between Victoria, TX and Laredo, TX: From Victoria over U.S. Hwy 59 to Laredo, and return over the same route; (e) between junction TX Hwy 9 and U.S. Hwy 281, at or near Three Rivers, TX, and Corpus Christi, TX: From junction TX Hwy 9 and U.S. Hwy 281, over TX Hwy 9 to Corpus Christi, and return over the same route; (f) between junction U.S. Hwys 60 and 87 and Las Cruces, NM: From junction U.S. Hwys 87 and 60 over U.S. Hwy 60 to Clovis, NM, then over U.S. Hwy 70 to Las Cruces, and return over the same route; (g) between junction U.S. Hwys 87 and 283 and Brady, TX: From junction U.S. Hwys 87 and 283, over U.S. Hwy 283 to junction U.S. Hwy 84, then over U.S. Hwy 84 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 183, then over U.S. Hwy 183 to junction U.S. Hwy 377, then over U.S. Hwy 377 to Brady and return over the same route; (h) between Victoria, TX and San Ant-



onio, TX: From Victoria over U.S. Hwy 87 to San Antonio and return over the same route; (i) between San Antonio, TX and Del Rio, TX: From San Antonio over U.S. Hwy 90 to Del Rio and return over the same route; (j) between Del Rio, TX and Laredo, TX: From Del Rio over U.S. Hwy 277 to junction U.S. Hwy 83, then over U.S. Hwy 83 to Laredo and return over the same route; (k) between Eagle Pass, TX and junction TX Hwy 57 and U.S. Hwy 81 at or near Moore, TX: From Eagle Pass over TX Hwy 57 to junction U.S. Hwy 81 and return over the same route; (l) between Lamesa, TX and Midland, TX: From Lamesa over TX Hwy 349 to Midland and return over the same route; (m) between Fort Worth, TX and Lubbock, TX: (1) From Fort Worth over U.S. Hwy 180 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Lubbock and return over the same route and (2) From Fort Worth over U.S. Hwy 80 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Lubbock and return over the same route; (n) between Abilene, TX and Anson, TX: From Abilene over U.S. Hwy 83 to Anson and return over the same route; (o) between Comfort, TX and junction TX Hwy 27 and U.S. Hwy 290: From Comfort over TX Hwy 27 to junction U.S. Hwy 290, and return over the same route; and (2) *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)*, between Shreveport, LA and Beaumont, TX serving no intermediate points and serving Shreveport for purposes of joinder only: From Shreveport over U.S. Hwy 171 to junction LA Hwy 5, then over LA Hwy 5 to junction U.S. Hwy 84, then over U.S. Hwy 84 to junction TX Hwy 7, then over TX Hwy 7 to junction U.S. Hwy 96, then over U.S. Hwy 96 to Beaumont and return over the same route, for 180 days. Applicant intends to tack with MC 2202 and subs thereto and to interline.

**SUPPORTING SHIPPER(S):** There are approximately 1,492 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. **SEND PROTESTS TO:** ICC, 731 Federal Building, 1240 East 9th Street, Cleveland, OH 44199. The purpose of this republication is to show applicant intends to tack and interline authority.

**MC 26396 (Sub-214TA)**, filed November 7, 1978. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln,

NE 68501. *Roofing materials and wood fiber materials*, from ports of entry on the International Boundary line between the United States and Canada located in MT, to points in the State of UT, for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** There are approximately (5) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. **SEND PROTESTS TO:** Paul J. Labane DS, ICC, 2602 First Avenue North, Billings, MT 59101.

**MC 46054 (Sub-80TA)**, filed November 6, 1978. Applicant: BROWN EXPRESS, INC., 428 South Main Street, San Antonio, TX 78285. Representative: Phillip Robinson, 1806 Rio Grande, Austin, TX 78768. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) Between Dallas, TX and Oklahoma City, OK: From Dallas over Interstate Highway 35 to Oklahoma City, serving no intermediate points. (2) Between Dallas, TX and Tulsa, OK: From Dallas over U.S. Highway 75 to junction U.S. Highway 69, then over U.S. Highway 69 to junction Indian Nation Turnpike, then over Indian Nation Turnpike to junction U.S. Highway 75 to Tulsa, and return over the same route, serving no intermediate points. (3) Between Dallas, TX and Indianapolis, IN: From Dallas over Interstate Highway 30 to Little Rock, AR, then over Interstate Highway 65 to Indianapolis, IN, and return over the same route, serving the intermediate point of Louisville, KY, and serving no other intermediate points except the junction of Interstate Highway 30 and U.S. Highway 59 (near Texarkana, TX) and Memphis, TN, for purposes of joinder only. (4) Between Louisville, KY and Detroit, MI: From Louisville, KY over Interstate Highway 71 to junction Interstate Highway 75, then over Interstate Highway 75 to Detroit, MI, and return over the same route, serving the intermediate points of Cincinnati and Toledo, OH. (5) Between Houston, TX and junction of Interstate Highway 30 and U.S. Highway 59, from Houston, TX over U.S. Highway 59 to junction Interstate Highway 30 and U.S. Highway 59, serving no intermediate points and serving the junction of Interstate Highway 30 and U.S. Highway 59 for purposes of joinder only. (6) Between Memphis, TN and St. Louis, MO: From Memphis, TN over Interstate

Highway 55 to St. Louis, MO, serving no intermediate points and serving Memphis for purposes of joinder only and serving St. Louis for purposes of interchange only. Applicant desires to serve all points in the Commercial Zones of OKC, TUL, OK; IND, LOU, KY; CIN & TOL, OH; and DET, MI. **RESTRICTION:** Service over Routes (3) and (4) is restricted against the transportation of shipments by carrier where carrier's origin and carrier's destination are both within IN, KY, MI, or OH. Applicant proposes to tack at Dallas and Houston, TX; and interline at Oklahoma City and Tulsa, OK; Indianapolis, IN; Louisville, KY; Cincinnati and Toledo, OH; St. Louis, MO; and Detroit, MI, for 180 days. **SUPPORTING SHIPPER(S):** There are approximately (429) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. **SEND PROTESTS TO:** Richard H. Dawkins DS, ICC, Room B-400 Federal Building, 727 E. Durango, San Antonio, TX 78206.

**MC 52460 (Sub-No. 227TA)**, filed November 7, 1978. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9637, Tulsa, OK 73107. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. *Anhydrous ammonia*, (in bulk), from the facilities of Chevron Chemical Company at or near Friend, KS., to points in Colorado, Nebraska, Oklahoma, Texas and Wy., for 180 days. An underlying ETA seeks up to 90 days authority. **SUPPORTING SHIPPER(S):** Chevron Chemical Company, 3001 LBJ Freeway, Suite 130, Dallas, TX 75234. **SEND PROTESTS TO:** Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

**MC 61620 (Sub-No. 14TA)**, filed November 7, 1978. Applicant: M & G TRANSPORTATION CO., INC., Gloucester, VA 23061. Representative: Eugene Thomas (same address as applicant). *Tin cans, glass, plastic, and paper containers, and accessories thereof*, used in the manufacture of foodstuffs, from Norfolk, VA., and from Baltimore, MD., to Norfolk, VA., and points in its commercial zone, and Seaford, VA., for 180 days. An underlying ETA seeks up to 90 days authority. **SUPPORTING SHIPPERS(S):** There are approximately (11) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. **SEND PRO-**

**TESTS TO:** Paul D. Collins DS, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

**MC 65941 (Sub-No. 59TA)**, filed November 6, 1978. Applicant: TOWER LINES, INC., Third and Warwood Avenue, Wheeling, WV 26003. Representative: Geo. V. Thieroff, Third and Warwood Avenue, Wheeling, WV 26003. *Zinc oxide*, in bags, from the facilities of St. Joe Zinc Company, Josephstown, (Porter township, Beaver County), PA., to Huntsville, AL., for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA. 15222. **SEND PROTESTS TO:** J. A. Niggemyer DS, ICC, 416 Old Post Office Building, Wheeling, WV 26003.

**MC 82841 (Sub-No. 238TA)**, filed November 5, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Representative: William E. Christensen (same address as applicant). *Panelized houses*, from Omaha, NE., to points in WY., for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** Larry D. Green President American Marketing Corporation, 14675 Grover St., Omaha, NE 68144. **SEND PROTESTS TO:** Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

**MC 102616 (Sub-No. 968TA)**, filed November 6, 1978. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Road, Akron, OH 44313. Representative: David F. McAllister, 250 North Cleveland-Massillon Road, Akron, OH 44313. *Crude light oil* (in bulk, in tank vehicles), from Terre Haute, IN, to Lemont, IL, for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** Union Oil Company of CA, 1650 E. Golf Road, Schaumburg, IL 60196. **SEND PROTESTS TO:** Mary Wehner DS, ICC, 731 Federal Office Bldg., 1240 East Ninth Street, Cleveland, OH 44199.

**MC 107403 (Sub-No. 1133TA)**, filed November 7, 1978. Applicant: MATA-LACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). *Dry sugar*, (in bulk, in tank vehicles), from Gramercy, LA, to Denison, TX; Pulaski, TN and St. Louis, MO, for 180 days. **SUPPORTING SHIPPER(S):** Colonial Sugars, Borden, Inc., 129 S. 5th Avenue, Gramercy, LA 70052. **SEND PROTESTS TO:** T. M. Esposito Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

**MC 107403 (Sub-No. 1135TA)**, filed November 6, 1978. Applicant: MATA-LACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). *Ground glass*, (in bulk), from Cleveland, OH, to Delmar, NY, for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** The Bassichis Co., 2323 W. Third Street, Cleveland, OH 44113. **SEND PROTESTS TO:** T. M. Esposito Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

**MC 114211 (Sub-No. 383TA)**, filed November 6, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adeler J. Warren (same address as applicant). *Iron and steel articles*, from the plantsite of Maverick Tube Corp., located at or near Union, MO, to points in Iowa, Kansas, Minnesota, Nebraska, North Dakota, and SD, for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** Maverick Tube Corp., 311 N. Lindbergh Boulevard, St. Louis, MO 63141. **SEND PROTESTS TO:** Herbert W. Allen DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

**MC 116457 (Sub-No. 37TA)**, filed November 6, 1978. Applicant: GENERAL TRANSPORTATION, INC., 1804 South 27th Avenue, P.O. Box 6484, Phoenix, AZ 85005. Representative: D. Parker Grosby, 1710 South 27th Avenue, P.O. Box 6484, Phoenix, AZ 85005. *Lumber and lumber products*, from Fredonia, AZ., to Bend, OR, and Caldwell, ID., for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** Kaibab Industries, P.O. Box 20506, Phoenix, AZ 85036. **SEND PROTESTS TO:** Andrew V. Baylor DS, ICC, Room 2020 Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

**MC 116763 (Sub-No. 453TA)**, filed November 6, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Metal and plastic containers and their equipment of bails, handles, covers, bungs, lids or nozzles*, (except commodities in bulk, in tank vehicles), from Homerville, GA., to points in the United States in and east of MN, IA, MO, OK & TX., for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER(S):** Standard Container Corporation, Grover Turner Materials Manager, P.O. Box 336, Homerville, GA 31634. **SEND PROTESTS TO:** Paul J. Lowry DS, ICC, 5515-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

**MC 118130 (Sub-No. 92TA)**, filed November 7, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. (1) *Charcoal briquets, vermiculite, hickory chips, fireplace logs, compressed sawdust (was impregnated), charcoal lighter fluid and related barbecue items*; and (2) *materials, equipment and supplies used in the sale and distribution of items named in (1) above*, (1) From Springfield, OR., to points in Arizona, California, Idaho, Montana, Nevada, Utah and WY, and (2) from points in Arizona, California, Idaho, Montana, Nevada, Utah and WY, to Springfield, OR., (1) from Elk Grove, CA., to points in Arizona, California, Nevada and UT, and (2) from points in Arizona, California, Nevada, and UT., to Elk Grove, CA., and (1) from Cotter, AR., to points in Arizona, California, Colorado, Kansas, Illinois, Missouri, New Mexico, Oklahoma and TX, and (2) from points in Arizona, California, Colorado, Kansas, Illinois, Missouri, New Mexico, Oklahoma and TX., to Cotter, AR; and (1) from Jacksonville, TX., to points in Arizona, California, Colorado, Nevada, New Mexico, and OK, and (1) from points in Arizona, California, Colorado, Nevada, New Mexico, and OK., to Jacksonville, TX., for 180 days. **SUPPORTING SHIPPER(S):** Kingsford Company, Division, of Clorox, 940 Commonwealth Blvd., Louisville, KY 40201. **SEND PROTESTS TO:** Martha A. Sewell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

**MC 119496 (Sub-No. 14TA)**, filed November 6, 1978. Applicant: THE JAMES GIBBONS CO., 1700 Sutton Avenue, Baltimore, MD 21227. Representative: L. C. Major, Jr., 6121 Lincoln Road, P.O. Box 11278, Alexandria, VA 22312. *Packaged petroleum products*, (except in bulk), from the plantsite of Quaker State Oil Refining Corp., Congo, WV., to Baltimore, MD., for 180 days. An underlying ETA seeks up to 90 days operating authority. **SUPPORTING SHIPPER(S):** J. D. Campbell GTM, Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. **SEND PROTESTS TO:** W. L. Hughes DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

**MC 120181 (Sub-13TA)**, filed November 6, 1978. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: Ralph R. Howard (same address as applicant). *Containers*, between Alton, IL, and Owensboro and Henderson, KY, for 180 days. An underlying ETA seeks up to 90 days of operating authority. **SUPPORTING SHIPPER:** Owens-Illinois, Inc., P.O. Box 1035,



Toledo, OH 43666. SEND PROTESTS TO: P. E. Binder DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO. 63101.

MC 125952 (Sub-32TA), filed November 7, 1978. Applicant: INTERSTATE DISTRIBUTOR CO., P.O. Box 99307, 8311 Durango S.W., Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Cakes and cookies*, from Oakland, CA, to points in CO, NM and TX; and (2) *Bakery supplies, materials, and ingredients*, from points in CO, NM and TX, to Oakland, under a continuing contract or contracts, with Mother's Cake & Cookie Co., for 180 days. SUPPORTING SHIPPER: Mother's Cake & Cookie Co., P.O. Box 24502, Oakland, CA. SEND PROTESTS TO: Hugh H. Chaffee DS, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 127602 (Sub-18TA), filed November 6, 1978. Applicant: DENVER-MIDWEST MOTOR FREIGHT, INC., P.O. Box 996, 5555 E. 58th Avenue, Commerce City, CO 80022. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Denver, CO and Phoenix, AZ; From Phoenix over Interstate Hwy 17 to Flagstaff, AZ, then over U.S. Hwy 89 to junction U.S. Hwy 160, then over U.S. Hwy 160 to Durango, CO, then over U.S. Hwy 550 to Montrose, CO, then over U.S. Hwy 550 to Grand Junction, CO, and then over Interstate Hwy 70 to Denver, CO, and return over the same route, serving the intermediate points of Montrose and Delta, CO, and Kayenta and Mexican Water, AZ, and the off-route points of Aneth, UT and Farmington, NM, for 180 days. SUPPORTING SHIPPERS: There are approximately (55) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Roger Buchanan DS, ICC, Room 492 U.S. Customs House, 721-19th Street, Denver, CO 80202.

NOTE.—Applicant intends to tack the authority sought with authority it holds in MC-127602 and subs thereunder and with temporary authority it holds under MC-P-13723 and MC-P-13021. Applicant intends to interline the authority sought at Grand

Junction and Denver, CO, Farmington, NM and Phoenix, AZ.

MC 128966 (Sub-6TA), filed November 7, 1978. Applicant: METROPOLITAN CARTAGE AND LEASING, INC., 1703 West 9th Street, Kansas City, MO 64101. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Meats, meat products and meat by-products, and articles distributed by packinghouses, and frozen foods and foodstuffs*, which require refrigeration, from points in the Kansas City, MO-KS Commercial Zone, as defined by the Commission, to points in KS, on and east of Highway 281, for 180 days. SUPPORTING SHIPPER(S): There are approximately (9) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 129624 (Sub-19TA), filed November 6, 1978. Applicant: ROUTE MESSENGERS OF PENNSYLVANIA, INC., 2425 Bainbridge Street, Philadelphia, PA 19146. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. *Cleaning compounds, insecticides, air fresheners, deodorizers, brooms, brushes, mops, toilet preparations, cosmetics, food supplements, food seasoning, household utensils, clothing hangers, mirrors, costume jewelry, books magnetic tapes, hosiery, and fire extinguishers, and advertising and promotional material related to the foregoing*, (1) from the facilities of Amway Corp., in Dayton, NJ, to the carrier's terminal in Philadelphia, PA; (2) from the carrier's terminals in Philadelphia, PA, and Camden, NJ, to points in Delaware, New Jersey, that part of PA east of the western boundaries of Potter, Clinton, Centre, Huntingdon and Fulton Counties, and that part of Maryland east of the Chesapeake Bay. RESTRICTION: Operations under paragraph 1 above are restricted to shipments moving from the facilities of Amway Corp., in Dayton, NJ to carrier's terminal in Philadelphia, PA, for trans-shipment under paragraph 2 above, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Amway Corp., Monmouth Junction Road, Box 900, Dayton, NJ 08810. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 133095 (Sub-212TA), filed November 6, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Rep-

resentative: Ralph B. Matthews, 1200 Gas Light Tower, 235 Peachtree Street, N.E., Atlanta, GA 30303. (1) *Heating and air conditioning equipment parts and accessories*, from the plantsite of Hell Quaker Corp., Nashville, TN., to points and places in the states of AL, AR, CT, IL, IN, KS, LA, MI, MS, MO, NJ, NY, OH, OK, PA and TX, and; (2) *Materials, equipment and supplies* used in the manufacture and distribution of heating and air conditioning equipment, parts and accessories, from points named in (1) above, to the facilities of Hell Quaker Corp. at or near Nashville, TN., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Hell Quaker Corp., 1714 Hell Quaker Blvd., Nashville, TN. SEND PROTESTS TO: Robert J. Kirspeel DS, Room 9A27 Federal Bldg., 819 Taylor Street, Ft. Worth, TX 76102.

MC 133095 (Sub-213TA), filed November 6, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Household products and related articles, dessert preparations, milk food liquid, beverage preparations, non-carbonated water, hair care toiletries and hair care equipment, drugs, shampoo, soap and toilet articles*, from the facilities utilized by Bristol-Myers Co., and its subsidiaries, Clairol, Inc., Drackett Company, Meade-Johnson & Co., Monarch Crown Corp., and Westwood Pharmaceuticals, Inc., at Dallas, TX to Shreveport, Monroe, Alexandria, New Orleans, Baton Rouge, Lafayette, and Broussard, LA and their commercial zones, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Bristol-Myers Co., 345 Park Avenue, New York, NY 10022. SEND PROTESTS TO: Robert J. Kirspeel, DS, Room 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 133655 (Sub-129TA), filed November 6, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities as are used or sold by retail variety stores*, between Ridgefield, NJ, and Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Mississippi, Oklahoma, Tennessee and TX, for 180 days. SUPPORTING SHIPPER: S. H. Kress and Company, 114 Fifth Avenue, New York, NY 10011. SEND PROTESTS TO: Haskell E. Ballard DS, ICC, Box F-13206 Federal Bldg., Amarillo, TX 79101.

MC 135082 (Sub-78TA), filed November 7, 1978. Applicant: ROADRUN-

NER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road, N.E., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). *Tile and floor coverings*, and the commodities used in the installation thereof, from El Paso, TX, to the states of AZ, NM, and CA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Facings of America, Inc., Van Gils Ltd., Phoenix, AZ. SEND PROTESTS TO: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue S.W., Albuquerque, NM 87101.

MC 135884 (Sub-14TA), filed November 8, 1978. Applicant: CALDWELL TRUCKING, INC., a corporation, Holdman Route, Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N.W., 23rd Avenue, Portland, OR 97210. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Lumber (Veneer Flitch Stock)*, from St. Joseph, MO, Louisville and Winchester, KY; New Albany, Edinburg and Seymour, IN, Piqua, OH; Martinsburg, VA; Rockford, IL; Princeton, WV and their commercial zones to the facilities of Fronville Commercial Co., Inc., at Wilsonville, OR, under a continuing contract, or contracts, with Fronville Commercial Co., Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Fronville Commercial Co., Inc., 9625 S.W., 5th, Wilsonville, OR 97070. SEND PROTESTS TO: R. V. Dubay DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 136782 (Sub-5TA), filed November 6, 1978. Applicant: R.A.N. TRUCKING CO., P.O. Box 367, Wheatland, PA 16161. Representative: Warren W. Wallin, Sullivan & Associates, Ltd., 10 South LaSalle Street, Chicago, IL 60603. *Meats, meat products, and meat by-products as described in Appendix I to the report in Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), from the facilities of Gartner-Harf Co. at Waterford, PA, to points in CT, DE, MD, MI, IL, IN, KY, MA, NJ, NY, OH, RI, VA, WI and DC, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Gartner Harf Co., R.D. No. 4, Waterford, PA 16441. SEND PROTESTS TO: John J. England DS, ICC, 2111 Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 138000 (Sub-40TA), filed November 7, 1978. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Bakery goods*, from Richmond, VA, and its commercial zone, to points in MI, for 180 days. An underly-

ing ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Nabisco, Inc., 6002 S. Laburnum Street, Richmond, VA 23231. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138686 (Sub-3TA), filed November 6, 1978. Applicant: L.C.W. TRUCKING, INC., 119 E. Chavez, Edinburg, TX 78539. Representative: L. C. Waller, 119 E. Chavez, Edinburg, TX 78539. *Mall beverages* from San Antonio, TX, to points in New Mexico, Arizona, Colorado and NV, for 180 days. SUPPORTING SHIPPER: Pearl Brewing Co., P.O. Box 1661, San Antonio, TX 78296. SEND PROTESTS TO: Richard H. Dawkins DS, ICC, Room B-400 Federal Bldg., 727 E. Durango St., San Antonio, TX 78206.

MC 140952 (Sub-1TA), filed November 7, 1978. Applicant: REFRIGERATED EXPRESS, INC., 720 12th Street, Huntington, WV 25701. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Such commodities as are dealt in by wholesale, retail, chain grocery and food business houses, moving in mechanically refrigerated vehicles*, from Huntington, WV, to points in West Virginia and those in Buchanan and Tazewell Counties, VA, for 180 days. SUPPORTING SHIPPERS: Swift & Company, Trevor H. Tucker Mgr., Trans. Services, 115 West Jackson Blvd., Chicago, IL 60604. (2) David E. Nystrom Asst., Traffic Mgr., Plants and Warehouses, The Nestle Company, Inc., 100 Bloomingdale Road, White Plains, NY 10604. (3) Robert W. Pettigrew, General Traffic Mgr., Hershey Chocolate Co., 19 E. Chocolate Avenue, Hershey, PA 17033. SEND PROTESTS TO: Ruth F. Stark, Secretary, ICC, 3108 Federal Office Bldg., 500 Quarrier Street, Charleston, WV. 25301.

MC 141357 (Sub-6TA), filed November 6, 1978. Applicant: GENE P. SHANUS, SHANUS, INC., 232 North First Street, Minneapolis, MN 55401. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Petroleum coke (in bulk)*, from Pine Bend, MN, to points in WI, for 180 days. SUPPORTING SHIPPER: Koch Refining Co., P.O. Box 43596, St. Paul, MN 55164. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 141572 (Sub-1TA), filed November 7, 1978. Applicant: COUNCIL HAULING, INC., 1447 Clay Street, Franklin, VA 23851. Representative: Richard J. Lee, 4070 Falstone Road, Richmond, VA 23234. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Lumber, particle-*

*board and wood residuals*, between the plantsites of Union Camp Corp., located near Franklin and Waverly, VA; Seaboard and Smithfield, NC, on the one hand, and on the other, points in Delaware, Maryland, New Jersey, Pennsylvania, Tennessee, West Virginia and the District of Columbia, under a continuing contract or contracts, with Union Camp Corp., for 180 days. SUPPORTING SHIPPER: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. SEND PROTESTS TO: Paul D. Collins DS, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 141804 (Sub-149TA), filed November 7, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Mouldings, mill work, wood products, building material and supplies*, from the facilities of Sierra Pacific Industries at Chico, CA, to Atlanta, GA, Grandville, MI, Hatfield, MA, Ocala, FL, Providence, R.I., Toledo, OH, and Waterbury, CT., and their respective commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Sierra Pacific Industries, P.O. Box 600, Chico, CA 95927. SEND PROTESTS TO: Irene Carlos, Trans. Asst., ICC, Room 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143001 (Sub-1TA), filed November 7, 1978. Applicant: GLENN PETERSON, d.b.a. PETERSON TRAN-SIT, Route 2, Merrill, WI 54452. Representative: Frank M. Coyne, 25 W. Main Street, Madison, WI 53703. *Canned vegetables*, from Poynette, WI, to points in Virginia, North Carolina, South Carolina, Georgia and FL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Oconomowoc Canning Co., P.O. Box 748, Oconomowoc, WI 53066. SEND PROTESTS TO: Ronald Morken DS, 212 E. Washington Avenue, Room 317, Madison, WI 53703.

MC 143032 (Sub-9TA), filed November 6, 1978. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 3112 Truck Center Drive, Duluth, MN 55806. Representative: James B. Hovland, 414 Gate City Bldg., P.O. Box 1680, Fargo, ND 58102. *Lumber, lumber products and wood products*, from the facilities of Weyerhaeuser Co. at or near Duluth, MN, to points in Ashland, Barron, Bayfield, Burrett, Chippewa, Douglas, Dunn, Eau Claire, Iron, Polk, Price, Rusk, St. Croix, Sawyer and Washburn Counties, WI, for 180 days. SUPPORTING SHIPPER: Weyerhaeuser Co., 100



South Wacker Drive, Chicago, IL 60606. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143223 (Sub-2TA), filed November 6, 1978. Applicant: CARL CRAWFORD, d.b.a. CRAWFORD MOBILE HOMES, North Road, Houlton, ME 04730. Representative: Virginia E. Davis, 2 Canal Street, Portland, ME 04112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Mobile and modular homes* in initial transportation, from Oxford, ME, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and NY, under a continuing contract or contracts, with Oxford Homes, Inc., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER: Oxford Homes, Inc., Route 26, Oxford, ME 04270. SEND PROTESTS TO: Max Gorenstein DS, ICC, 150 Causeway Street, Boston, MA 02114.

MC 143267 (Sub-40TA), filed November 7, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. *Iron and steel articles*, from the facilities of Wheeling Pittsburgh Steel, Allentown, PA, to points in the lower peninsula of MI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, PA 15230. SEND PROTESTS TO: Mary Wehner DS, ICC, 731 Federal Office Building, 1240 East Ninth St., Cleveland, OH 44199.

MC 143436 (Sub-19TA), filed November 6, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. *Foodstuffs*, (except in bulk), and confectionery items in vehicles equipped with mechanical refrigeration, from the facilities of Hershey Foods Corp., located at or near Cincinnati, OH, to points in IN, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Hershey Foods Corp., Hershey, PA 17033. SEND PROTESTS TO: Beverly J. Williams Trans. Asst., ICC, Federal Bldg., & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 143775 (Sub-30TA), filed November 6, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 W. Orangewood, Glendale, AZ 85301. *General commodities*

moving on Bills of Lading of Freight Forwarders as defined in Section 402(a)(5) of the Interstate Commerce Act. From points in TX, MO, and TN, to New York, NY; Patchogue, L.I., Scranton, PA; Allentown, and Philadelphia, PA; New Haven, CT; Worcester and Boston, MA; Binghamton and Utica, NY; Burlington, VT; Rochester and Buffalo, NY; Baltimore, MD; Washington, DC; Norfolk and Richmond, VA; and points with the commercial zones thereof, for 180 days. SUPPORTING SHIPPER(S): Springmeier Shipping Company, Inc., 1123 Hadley Street, St. Louis, MO 63101. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020, Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

MC 143775 (Sub-31TA), filed November 6, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 W. Orangewood, Glendale, AZ 85301. *Alcoholic beverages*, (except in bulk), from Asti and Madera, CA, to Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and VA, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): United Vintners, 601 Fourth St., San Francisco, CA 94107. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020, Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

MC 143995 (Sub-8TA), filed November 6, 1978. Applicant: SLOAN TRANSPORTATION, INC., 6522 W. River Drive, Davenport, IA 52802. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Non-alcoholic beverages*, from the facilities of Mid-West Pop Quad Cities, Inc., at Moline, IL, to points in IA, under a continuing contract, or contracts, with Mid-West Pop Quad Cities, Inc., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): Mid-West Pop Quad Cities, Inc., 5205 22nd Avenue, Moline, IL 61265. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 144624 (Sub-1TA), filed November 7, 1978. Applicant: AMERICAN-STREVELL TRANSPORT, INC., 1401 South 700 West, Salt Lake City, UT 84104. Representative: Thomas J. Giblein, Jr., P.O. Box 26708, 1401 South 700 West, Salt Lake City, UT 84125. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building*

*equipment and supplies*; such commodities as are used by or dealt in by wholesale or retail department, grocery and hardware stores and warehouses, (except heavy machinery, commodities in bulk, in tank vehicles, and uncrated store fixtures), from Rockdale County, GA, and Marshall, MI (1) from all points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and DC, to all points in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, (2) between Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming, under a continuing contract, or contracts, with American-Strevell, Inc., for 180 days. SUPPORTING SHIPPER(S): American-Strevell, Inc., 1401 South 700 West, Salt Lake City, UT 84104. (George J. Bitzes, Jr., President and C.F.O.) SEND PROTESTS TO: L. D. Helfer DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 144692 (Sub-2TA), filed November 6, 1978. Applicant: GARY L. MANN, d.b.a. G. L. MANN TRUCKING, 551 East 18th Street, Hastings, MN 55033. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Petroleum coke*, (in bulk), from Pine Bend, MN, to points in WI, for 180 days. SUPPORTING SHIPPER(S): Koch Refining Company, P.O. Box 43596, St. Paul, MN 55164. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145001 (Sub-3TA), filed November 6, 1978. Applicant: HORACE CHAVIS, d.b.a. CHAVIS TRANSFER, 2019 Decatur Street, Richmond, VA 23224. Representative: Calvin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated cabinets*, from points in VA, to points in GA, FL, NC, DC, OH, TX, NY, and KY, under a continuing contract or contracts, with Modern Woodwork, Inc., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Modern Woodwork, Inc., 1620 Altamont Avenue, P.O. Box 6817, Richmond, VA 23230. SEND PROTESTS

TO: Paul D. Collins DS, Rm. 10-502 Federal Bldg., 400 N. 8th Street, Richmond, VA 23240.

MC 145590 (Sub-1TA), filed November 3, 1978. Applicant: J & M ENTERPRISES, INC., 64 Oakland Street, East Hartford, CT 06108. Representative: Hugh M. Joseloff, 80 State Street, Hartford, CT 06103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise* as is produced or dealt in by wholesale, retail and chain bakeries, and materials, equipment and supplies used in the production thereof, between Springfield, MA, on the one hand, and, on the other, points in Rhode Island, Connecticut, New Hampshire, New York, Vermont, Maine, New Jersey and PA., under a continuing contract or contracts, with Springfield Bakery, Inc., for 90 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Springfield Bakery, Inc., 297 Plainfield Street, Springfield, MA. SEND PROTESTS TO: J. D. Perry, Jr., ICC 135 High Street, Room 324, Hartford, CT. 06103.

MC 145613 (Sub-1TA), filed November 3, 1978. Applicant: TOBAR ENTERPRISES, INC., P.O. Box 16188, Salt Lake City, UT 84116. Representative: Kent S. Pantone, 2944 Willow Creek Drive, Sandy, UT 84070. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fabric, greige goods, (not dyed), rolled fabric goods, piece goods, trim items (zippers, thread, buttons, belts, etc.), cut goods, finished goods, apparel manufacturing equipment, office equipment and supplies and imported fabric*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, WA, WY, and UT., under a continuing contract or contracts, with Pyke Manufacturing Company in Salt Lake City, UT., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Pyke Manufacturing Company, 1025 South 700 West, Salt Lake City, UT 84104. (Douglas J. Hansen, Personnel/Industrial Relations Manager) SEND PROTESTS TO: Lyle D. Helfer DS, ICC, 5301 Federal Bldg., Salt Lake City, UT. 84138.

MC 145642 (Sub-1TA), filed November 6, 1978. Applicant: GENE INMAN, d.b.a. GENE INMAN TRUCKING, RFD 1, Box 148-A, Whiteville, NC 28472. Representative: Mr. F. Kent Burns, 107 Fayetteville Street, Raleigh, NC 27602. *Wood residuals including woodchips, woodchips and sawdust*, between points in NC, SC, and VA, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): Georgia-Pacific Corporation, P.O. Box 1808, Augusta, GA 30903. SEND PRO-

TESTS TO: Archie W. Andrews DS, ICC, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 145684 (Sub-1TA), filed November 6, 1978. Applicant: T. H. SOSSAMAN, P.O. Drawer 33, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry animal and poultry feeds, and equipment and supplies* used in the raising of livestock, in mixed loads with dry animal and poultry feeds, (except liquid commodities in bulk, in tank vehicles); and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of dry animal and poultry feeds, (except liquid commodities in bulk, in tank vehicles), (1) from Hereford, TX to points in OK, NM, NE, KS, and CO; and (2) from points in OK, NM, NE, KS, and CO to Hereford, TX., under a continuing contract or contracts, with Moorman Manufacturing Company, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Moorman Manufacturing Company, Hereford, TX SEND PROTESTS TO: Haskell E. Ballard DS, ICC.

MC 145691 (Sub-1TA), filed November 3, 1978. Applicant: WARNER C. CORBIN, d.b.a. C & B TRANSFER, 51 Kane Street, Baltimore, MD 21224. Representative: Chester A. Zyblut, 1030 15th Street, N.W., Washington, DC 20005. *General commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), when moving on bills of lading of freight forwarders as defined in Section 402 (a)(5) of the Act, between the facilities of Lifschultz Fast Freight, Inc., Baltimore, MD, on the one hand, and, on the other, Washington, DC, and points in its commercial zone, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Raymond A. Peloquin Terminal Manager, Lifschultz Fast Freight, Inc., 51 Kane Street, Baltimore, MD. 21224. SEND PROTESTS TO: William L. Hughes DS, ICC, 1025 Federal Bldg., Baltimore, MD. 21201

MC 145715 TA, filed November 7, 1978. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Road, Van Buren, AR 72956. Representative: Bernard J. Kompare, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. *Meats, meat products, meat by-products and articles distributed by meat packing-houses*, as described in Sections A & C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61

M.C.C. 209 and 766, (except hides and skins and commodities in bulk), from the facilities utilized by John Morrell & Co., at or near Fort Smith, AR., to points in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania and TN, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., 208 S. LaSalle Street, Chicago, IL 60604. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 145721 TA, filed November 7, 1978. Applicant: STEWART TRANSPORTATION SERVICES, INC., P.O. Box 926, Melbourne, FL 32901. Representative: Elbert Brown, Jr., P.O. Box 1278, Altamonte Springs, FL 32701. *General commodities*, (except household goods, classes A and B explosives, commodities requiring the use of special equipment, commodities in bulk, having an immediately prior or subsequent movement by air, between Melbourne Regional Airport and Orlando International Airport, FL, on the one hand, and, on the other, points in Brevard, Osceola, Orange, Seminole and Indian River Counties, FL., for 180 days. SUPPORTING SHIPPER(S): (1) Dictaphone Corp., 3900 W. Sarno Road, Melbourne, FL (2) Air Compak, Inc., P.O. Box 607, Melbourne, FL 32901 (3) Harris Controls, Inc., 2140 Troutman Blvd., Palm Bay, FL. SEND PROTESTS TO: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL. 32202.

By the Commission.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-36187 Filed 12-28-78; 8:45 am]

#### [7035-01-M]

#### MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 237]

DECEMBER 20, 1978

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify



the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

#### MOTOR CARRIERS OF PROPERTY

MC 3252 (Sub-107TA), filed November 9, 1978. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 03043. *Gasoline and diesel fuel*, (in bulk), from Albany, NY., to Lee and North Adams, MA., for 90 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Lehigh Oil Company, Inc., 1 Terminal Way, Norwich, CT. 06360. SEND PROTEST TO: ICC, Room 305, 76 Pearl Street, Portland, ME 04111.

MC 11207 (Sub-459TA), filed November 9, 1978. Applicant: DEATON, INC., 317 Avenue W, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. *Building paper, roofing paper, sheathing paper and wrapping paper*, between Valdosta, GA., on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Indiana, Kentucky, Kansas, Louisiana, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia, for 180 days. SUPPORTING SHIPPER(S): Firstline Corporation, 3425 Wilshire Boulevard, Los Angeles, CA 90010. SEND PROTESTS TO: Mable E. Holston Trans. Asst., ICC, Room 1616, 2121 Bldg., Birmingham, AL 35203.

MC 21455 (Sub-46TA), filed November 15, 1978. Applicant: GENE MITCHELL CO., West Liberty, IA 52776. Representative: Kenneth P. Dudley, 611 Church Street, P.O. Box

279, Ottumwa, IA 52501. *Frozen pancreas glands for pharmaceutical purposes*, (1) from Davenport, and Sioux City, IA; and Omaha, NE., to Elizabeth, NJ; Houston, TX; New Orleans, LA; and Norfolk, VA; and (2) from Milwaukee, WI., to Houston, TX and New Orleans, LA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): H. A. Salzman Company, 308 E. River Drive, Davenport, IA 52808. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 40978 (Sub-48TA), filed November 13, 1978. Applicant: CHAIR CITY MOTOR EXPRESS, CO., 3321 Business 141 South, P.O. Box 686, Sheboygan, WI 53081. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Plastic sheeting in rolls*, from the facilities of The Orchard Corporation of America at St. Louis, MO, to the facilities of Pluswood Incorporated at Oshkosh, WI, for 180 days. SUPPORTING SHIPPER(S): Pluswood Incorporated, P.O. Box 2w48, Oshkosh, WI. 54901. SEND PROTESTS TO: Gail Daugherty Trans. Asst, ICC, 619 U.S. Courthouse & Federal Bldg., 517 East Wisconsin Avenue, Milwaukee, WI. 53202.

MC 52704 (Sub-191TA), filed November 9, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Plastic containers and parts for plastic containers*, from the facilities of Amoco Chemicals Corporation at or near Monroe, GA., to points in AL, FL, NC, SC, TN and WV., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Amoco Chemicals Corporation, 200 East Randolph Drive, Chicago, IL 60601. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 52704 (Sub-192TA), filed November 9, 1978. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. (1) *Malt beverages, in containers*, from the facilities of Jos. Schlitz Brewing Company located at or near Memphis, TN, Tampa, FL and Winston-Salem, NC, to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and the District of Columbia; and (2) *Materials, equipment and supplies used in the manufacture and distribution of malt beverages*, (except commodities in bulk), from points in the states

named in (1) above, to the facilities of Jos. Schlitz Brewing Company at or near Memphis, TN, Tampa, FL and Winston-Salem, NC., for 180 days. SUPPORTING SHIPPER(S): There are approximately (10) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 61955 (Sub-24TA), filed November 15, 1978. Applicant: CENTROPO-LIS TRANSFER CO., INC., 701 North Sterling, Sugar Creek, MO 64054. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. *Fertilizer and/or fertilizer ingredients*, (in bulk), from the facilities of Brunswick River Terminal, Inc., at or near Brunswick, MO., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma and TN., for 180 days. SUPPORTING SHIPPER(S): Brunswick River Terminal, Inc., P.O. Box 235, Brunswick, MO 65236. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 64932 (Sub-589TA), filed November 9, 1978. Applicant: ROGERS CARTAGE CO., 10735 South Cicero, Oak Lawn, IL 60453. Representative: William F. Farrell, 10735 South Cicero, Oak Lawn, IL 60453. *Sulphuric acid*, (in bulk), in heresite lined tank vehicles, from the plantsite of Prestolite Co., at Reading, PA., to the plantsite of Prestolite at Toledo, OH., for 180 days. SUPPORTING SHIPPER(S): ELTRA Corporation, 511 Hamilton Street, Toledo, OH 43694. SEND PROTESTS TO: Lois M. Stahl Trans., Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 87476 (Sub-14TA), filed November 9, 1978. Applicant: CARL SCHAEFER, JR., TRUCK LINE, INC., 2600 Willowburn Avenue, Dayton, OH 45426. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. *Inedible meat by-products*, in tubs with or without lids, in refrigerated equipment, between points in OH, on the one hand, and, on the other, points in IL, IN, KY, MI, OH and PA., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kal Kan Foods, Inc., John D. Jurczak Purchasing Manager, 5115 Fisher Road, Columbus, OH 43228. SEND PROTESTS TO: Paul J. Lowry DS, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 106074 (Sub-71TA), filed November 9, 1978. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Highway No. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. *Metal containers, metal container closures, metal container ends, and metal container accessories*, from the facilities of Carnation Company at St. Joseph, MO., to Tucker, GA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-72TA), filed November 9, 1978. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Highway No. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. *Clay, floor sweeping compounds, and absorbents*, (except in bulk), from the facilities of Oil-Dri Corporation of America at or near Ripley, MS., to all points in Iowa, Illinois, Kansas, Minnesota, Missouri, Nebraska and WI., for 180 days. SUPPORTING SHIPPER(S): Oil-Dri Corp. of America, 520 North Michigan Avenue, Chicago, IL 60601. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 108053 (Sub-155TA), filed November 15, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., 1520 West 23rd Street, Fremont, NE 68025. Representative: Arthur J. Sibik, 7025 So. Pulaski Road, Chicago, IL 60629. *Foodstuffs*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Suffolk, VA, to points in IL and OH, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): James J. Walsh, Director of Traffic, Standard Brands Incorporated, 625 Madison Avenue, New York, NY 10022. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 113459 (Sub-127TA), filed November 9, 1978. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, OK 73142. Representative: Robert Fisher, P.O. Box 94850, Oklahoma City, OK 73142. *Iron or steel forgings in the rough*, from Claremore, OK, to Clinton, IA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Kyle Forge Company, 1400 Industrial Blvd., Claremore, OK 74117. SEND PROTESTS TO: Connie

Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 113908 (Sub-454TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). *Cat litter*, (in bulk, in bags, or in containers), in straight loads or in mixed shipments with fertilizer and de-icer, from Viroqua, WI, and the commercial zone thereof, to points in AR, CO, IL, IN, IA, KS, KY, MI, MO, MT, MN, NE, ND, OH, OK, SD, TN, WY (note exceptions on application), for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Howard Johnson Enterprises, Viroqua, WI. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 113908 (Sub-456TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). *Flour*, (in bulk), from Minneapolis, St. Paul, Hastings, and Wabasha, MN, and their respective commercial zones, to Springfield, MO, and its respective commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Kraft, Inc., Chicago, IL. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 114211 (Sub-387TA), filed November 15, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *Iron and steel articles*, from Granite City and Alton, IL, to John Deere, Des Moines Works, Ankeny, IA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Deere, Des Moines Works, P.O. Box 1595, Des Moines, IA 50306. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 114632 (Sub-185TA), filed November 9, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David Peterson, P.O. Box 287, Madison, SD 57042. *Gypsum, gypsum products and materials and supplies used in the manufacture, installation and distribution of gypsum products*, between the facilities of Georgia-Pacific Corporation, Gypsum division located at Cuba, MO., on the one hand, and, on the other, all points in the United States, (except Hawaii), for 180 days. SUPPORTING SHIPPER(S): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010

(Robert A. Cronk Trans-Supervisor) SEND PROTESTS TO: J. L. Hammond DS, ICC, Room 455 Federal Building, Pierre, SD 57501.

MC 114725 (Sub-92TA), filed November 9, 1978. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald W. Wynne, (same address as applicant). *Waste water treatment sludge*, from Rochester, MN, to Missouri City, MO, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Browning-Ferris Industries, Inc., Edd D. Thomas Line Manager, P.O. Box 183, Liberty, MO 64068. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 117147 (Sub-11TA), filed November 9, 1978. Applicant: STARR'S TRANSPORTATION, INC., Upper Main Street, North Troy, VT 05859. Representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Lumber, plywood hardboard, particle-board, gypsum board, molding, supplies and accessories* used in the installation thereof, from Chesapeake, VA, to points in Vermont, New Hampshire, Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, Pennsylvania and D.C., under a continuing contract, or contracts, with Weyerhaeuser Company, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Weyerhaeuser Company, P.O. Box 1188, Chesapeake, VA 23320. SEND PROTESTS TO: David A. Demers DS, ICC, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 117165 (Sub-47TA), filed November 6, 1978. Applicant: ST. LOUIS FREIGHT LINES, INC., 1111 U.S. Highway, Michigan City, IA 46360. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Salt*, (in bags), from Michigan City, IN, to points in IL and WI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Diamond Crystal Salt Company, 916 South Riverside Avenue, St. Clair, MI 48079. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 117765 (Sub-248TA), filed November 9, 1978. Applicant: HAHN TRUCK LINE, INC., 1100 South MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan, 1100 South MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. *Malt beverages*, in containers, from St. Paul MN, to TX, for 180 days. An un-



derlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Lone Star Beer Company, Inc., 581 Garden Oaks Blvd., Houston, TX 77018. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 118989 (Sub-209TA), filed November 15, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Rolland K. Draves, 5223 South 9th Street, Milwaukee, WI 53221. Plastic articles, from the facilities of Hercules Incorporated at Terre Haute, IN., to the facilities of Proctor & Gamble at Fort Madison, IA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Hercules Incorporated, 814 Commerce Drive, Oakbrook, IL 60521. SEND PROTESTS TO: Gail Daugherty Trans. Asst., ICC, U. S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 118989 (Sub-210TA), filed November 15, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Rolland K. Draves, 5223 South 9th Street, Milwaukee, WI 53221. Metal containers and metal can ends, between the plants of Carnation Co., at Oconomowoc and Waupun, WI., and Proctor and Gamble plant and warehouses located in Cincinnati, OH., commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carnation Co., 39526 Marks Road, P. O. Box 87, Oconomowoc, WI 53066. SEND PROTESTS TO: Gail Daugherty Trans. Asst., ICC, U. S. Federal Bldg., & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119399 (Sub-84TA), filed November 9, 1978. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, Joplin, MO 64801. Representative: Dean Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Carbonated beverages, non alcoholic, from Lenexa, KS., to points in OK., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Shasta Beverages, Hayward, CA 94545. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119399 (Sub-85TA), filed November 9, 1978. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, Joplin, MO 64801. Representative: David L. Sitton (same address as applicant). Zinc Oxide, from Hillsboro, IL., to all points in Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana,

Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin and WY., for 180 days. SUPPORTING SHIPPER(S): Eagle Picher Industries, Inc., P. O. Box 1328, Joplin, MO. 64801. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119496 (Sub-15TA), filed November 9, 1978. Applicant: THE JAMES GIBBONS CO., 1700 Sutton Avenue, Baltimore, MD 21227. Representative: L. C. Major, Jr., P. O. Box 11278, 6121 Lincoln Road, Alexandria, VA 22312. Packaged petroleum products, (except in bulk), from the plants of Witco Chemical Corporation, Kendall/Amalie Division, located in Bradford, PA., to Baltimore, MD., for subsequent movement by water, and empty containers on return, for 180 days. SUPPORTING SHIPPER(S): George L. Keller TM, Witco Chemical Corporation, 77 N. Kendall Avenue, Bradford, PA 16701. SEND PROTESTS TO: William L. Hughes DS, ICC, 1025 Federal Building, Baltimore, MD 21201.

MC 119634 (Sub-29TA), filed November 14, 1978. Applicant: DICK IRVIN, INC., P. O. Box P, Shelby, MT 59474. Representative: Charles R. Irvin (same address as applicant). Agricultural chemicals, from Chicago, IL., and St. Joseph, MO., to Great Falls, MT and Minot, ND., for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Mike Thomas Mgr., Wilbur Ellis Company, P. O. Box 1627, Great Falls, MT 59401. SEND PROTESTS TO: Paul J. Labane DS, 2602 First Avenue North, Billings, MT 59101.

MC 121107 (Sub-18TA), filed November 9, 1978. Applicant: PITT COUNTY TRANSPORTATION CO., INC., P. O. Box 207 Farmville, NC 27828. Representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. (1) Materials, supplies and equipment, (except commodities in bulk, in tank vehicles), used in the processing, packing, storing, handling, and marketing of tobacco, and (2) unmanufactured tobacco when moving on the same vehicle at the same time with the commodities described above, between points in Florida, Georgia, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee, Virginia and WV., for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Philip Morris, USA, P. O. Box 26603, Richmond, VA 23261. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Building, 310 New Bern Avenue, P. O. Box 26896, Raleigh, NC. 27611.

MC 124328 (Sub-125TA), filed November 9, 1978. Applicant: BRINK'S INC., P. O. Box 1125, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street NW., Washington, D.C. 20006. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Currency, from Great Falls to Helena, MT., under a continuing contract or contracts, with Federal Reserve Board, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Board of Governors of the Federal Reserve System, Federal Reserve Board, 20th and C Streets, N.W., Washington, DC 20551. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 124656 (Sub-12TA), filed November 15, 1978. Applicant: JOHN LONG TRUCKING, INC., 1030 Denton Street, Sapulpa, OK 74066. Representative: Dean Williamson, 280 National Foundation Life Building, 3535 N.W., 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Glass bottles, from Muskogee and Ada, OK., to points in Idaho, Montana, Nevada, Oregon, Utah, Washington, and WY., under a continuing contract, or contracts, with Brockway Glass Co., Inc., of Muskogee, OK., for 180 days. SUPPORTING SHIPPER(S): Brockway Glass Co., Inc., P. O. Box 8, Muskogee OK 74401. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 133095 (Sub-217TA), filed November 9, 1978. Applicant: EEXAS CONTINENTAL EXPRESS, INC., P. O. Box 434, 2603 W. Euless Boulevard, Euless, TX 76039. Representative: Ralph B. Matthews, 1200 Gas Light Tower, 235 Peachtree Street, N.E. Atlanta, GA 30303. Materials, equipment and supplies used in the manufacture of drugs, medicines, nutritional and anti-coagulant solutions, distilled water and commodities used in the administration thereof, from points in the states of Delaware, Illinois, Indiana, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Tennessee, and WI., to the facilities of McGaw Industries, Inc., division of American Hospital Supply at Milledgeville and Atlanta, GA., for 180 days. SUPPORTING SHIPPER(S): McGaw Laboratories, P. O. Box 11887, Santa Ana, CA 92711. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133095 (Sub-No. 218TA), filed November 15, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P. O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P. O. Box 872, Atlanta, GA 30301. Paper and paper products and materials used in the manufacturing of paper and paper products, (1) from Chester, PA., to GA and AL., and (2) from Atlanta, GA., to AL. RESTRICTION: Restricted to traffic originating at or destined to the facilities of Scott Paper Company, for 180 days. SUPPORTING SHIPPER(S): Scott Paper Company, Scott Plaza 1, Philadelphia, PA. 19113. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133908 (Sub-No. 455TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P. O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). Citrus distillers solubles, (in bulk), from Lake Alfred, FL., and the commercial zone, to Macon, GA and the commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Florida Distillers Company, Lake Alfred, FL 33805. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 135237 (Sub-No. 6TA), filed November 13, 1978. Applicant: EAST PENN TRUCKING CO., R.D. No. 1, Leighton, PA 18325. Representative: S. Berné Smith, P. O. Box 1166, Harrisburg, PA 17108. Coal, (in bulk, in dump vehicles), from points in Carbon, Luzerne, and Schuylkill Counties, PA., to Philadelphia, PA., Camden, NJ., and Wilmington, DE, and their commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): F. A. Potts & Co., Inc., P. O. Box 594, Pottsville, PA 17901. SEND PROTESTS TO: Paul J. Kenworthy DS, ICC, 314 U.S. Post Office Bldg., Scranton, PA 18503.

MC 138469 (Sub-No. 91TA), filed November 9, 1978. Applicant: DONCO CARRIERS, INC., P. O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Such commodities as are dealt in by used by Pottery and Pottery Supply Stores, (except commodities in bulk, in tank vehicles), from Edgar, FL; Macon and McIntyre, GA; Mayfield, KY; High Hill, MO; Spruce Pine, NC; Oak Hill, OH and Custer, SD to the facilities of Earth and Fire Pottery Supply, Oklahoma City, OK., restricted to shipments originating at the named origins and destined to the named destinations, for 180 days. An

underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Earth & Fire Pottery Supply, 1101 Enterprise Avenue Bay 13, Oklahoma City, OK 73128. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 139193 (Sub-No. 90TA), filed November 9, 1978. Applicant: ROBERTS & OAKE, INC., Blue Ridge Tower, Suite 820, 4240 Blue Ridge Boulevard, Kansas City, MO 64135. Representative: Jacob P. Billig, 2033 K Street, NW., Suite 300, Washington, D.C. 20006. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Usual meat descriptions, from Montgomery, AL., to all points in the U.S. (except Alaska, Alabama and Hawaii), restricted to a transportation service, performed under a continuing contract or contracts, with John Morrell & Co., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., Chicago, IL. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 140241 (Sub-No. 34TA), filed November 9, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Roundridge, KS 67107. Representative: William B. Barker, 641 Harrison Street, Topeka, KS 66603. Shredded rubber, (in bags), from Wichita, KS., to points in the United States, (except Alaska and Hawaii), for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Sealing and Asphalt Specialists, 2900 E. 33rd St., Wichita, KS 67219. SEND PROTESTS TO: M. E. Taylor DS, ICC, 101 Litwin Building, Wichita, KS 67202.

MC 141921 (Sub-No. 30TA), filed November 9, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03103. Representative: John A. Sykas (same address as applicant). Meat, meat products and meat by-products and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Illini Beef Packing at or near Geneseo, IL to points in Maine, Massachusetts, New Hampshire, Vermont, Connecticut, Rhode Island and NY., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Illini Beef Packers, Inc., P. O. Box 245, Geneseo, IL 61254 Attn: Joe Leamen Traffic Manager. SEND PROTESTS TO: Ross J. Seymour DS, ICC, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 141921 (Sub-No. 31TA), filed November 9, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). Meat, meat products and meat by-products and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides, skins, and commodities in bulk), from the facilities of United Packing Company at Denver, CO to points in New York, New Jersey, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and ME., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): United Packing Company, 5000 Clarkson Street, Denver, CO 80216. (Attn: M. J. Cloughesy Distribution Manager) SEND PROTESTS TO: Ross J. Seymour DS, ICC, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 143183 (Sub-No. 4TA), filed November 9, 1978. Applicant: L. M. ROACH, d.b.a. D & L TRUCKING CO., P. O. Box 1741 (Sampson Road 145), Wilmington, NC 28401. Representative: Ralph McDonald, 336 Fayetteville Street Mall, P. O. Box 2246, Raleigh, NC 27602. Salt (in bulk, in pneumatic tanks), from the facilities of Carolina Salt Company at or near Wilmington, NC., to points in SC., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carolina Salt Company, Box Number 26, Wilmington, NC 28401. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Bldg., 310 New Bern Avenue, P. O. Box 26896, Raleigh, NC 27611.

MC 143328 (Sub-No. 11TA), filed November 9, 1978. Applicant: EUGENE TRIPP TRUCKING, P. O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue NW., Washington, DC 20036. (1) Malt beverages, from St. Paul, MN, to points in MT and WA, (2) Malt beverages, from LaCrosse, WI, to points in WA, and (3) Empty containers, from points in MT and WA to St. Paul, MN, and LaCrosse, WI., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): G. Heileman Brewing Company, P. O. Box 459, LaCrosse, WI 54601. SEND PROTESTS TO: Paul J. Labane DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 144090 (Sub-No. 2TA), filed November 9, 1978. Applicant: RED LETTER TRUCKING CO., 250 Mt. Lebanon Boulevard, Pittsburgh, PA 15234. Representative: Stanley E. Levine, Wick, Vuono, & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219.



Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beet pulp pellets*, from Pindlay and Freemont, OH., to points in PA., points in Chataqua, Cattaraugus, and Erie Counties, NY and points in Washington and Frederick Counties, MD., under a continuing contract, or contracts, with Jesse C. Stewart Co., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Jesse C. Stewart Co., 250 Mt. Lebanon Blvd., Pittsburgh, PA 15234. SEND PROTESTS TO: John J. England DS, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 144117 (Sub-No. 19TA), filed November 9, 1978. Applicant: T.L.C. LINES, INC., 1666 Fabric, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 206 West Touhy Avenue, Park Ridge, IL 60068. *Charcoal briquettes, vermiculite, charcoal lighter fluid, hickory chips, fireplace logs, and barbecue cooking utensils*, (except commodities in bulk), from the facilities of The Kingsford Co., at Jacksonville, TX., to points in Arizona, California, Colorado, New Mexico, Nevada and UT, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): The Kingsford Company, P.O. Box 1033, Louisville, KY 40201. SEND PROTESTS TO: P. E. Biner DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 144122 (Sub-No. 33TA), filed November 9, 1978. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. *Hospital supplies and drugs*, (except in bulk), from the facilities of Abbott Laboratories at North Chicago, IL; to Baltimore, MD; Boston, MA; Jersey City, NJ; King of Prussia and Pittsburgh, PA; Los Angeles and San Francisco, CA; Seattle, WA; and Cleveland and Toledo, OH, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Abbott Laboratories, 14th Street and Sheridan Road, North Chicago, IL 60604. SEND PROTESTS TO: Joel Morrows DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144540 (Sub-No. 1TA), filed November 8, 1978. Applicant: JOHNSON BROTHERS TRUCKING CO., INC., 211 Spring Street, Herndon, VA 22070. Representative: James Anton, 1133 Munsey Building, 1329 E Street NW., Washington, DC 20004. *Stone*, from points in Loudoun, Arlington and Fairfax Counties, Richmond and Fredericksburg, VA., to the District of Columbia and points in MD., for 180

days. SUPPORTING SHIPPER(S): Super Concrete Corporation, 3058 K Street, NW., Washington, D.C. SEND PROTESTS TO: Theresa Statuti Trans., Consumer Specialist, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 145513 (Sub-No. 1TA) filed November 9, 1978. Applicant: SERVICE TRANSPORTATION, INC., 526 Second Avenue North, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Apple juice, apple cider, and vinegar*, (1) From Fruitland, ID and points in its commercial zone, to points in CA and (2) from Payson, UT, to Fruitland, ID and points in its commercial zone, under a continuing contract, or contracts, with Payette Cider and Vinegar, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Payette Cider and Vinegar, P.O. Box 528, Fruitland, ID 83619. SEND PROTESTS TO: Barney L. Hardin DS, ICC, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 145565 (Sub-1TA), filed November 9, 1978. Applicant: C. D. BRESHEARS, d.b.a. J & B SERVICES, 1307 South Lincoln, Casper, WY 82601. Representative: C. D. Breshears, 1307 South Lincoln, Casper, WY 82601. *Machinery, equipment, and supplies used in, or in connection with, the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products*, including machinery, equipment, materials, and supplies used in the mining industry, restricted against the transportation of complete drilling rigs, between points in Wyoming, North Dakota, South Dakota, Utah, Colorado, Idaho and MT, for 180 days. An underlying ETA seeks up to 9 days authority. SUPPORTING SHIPPER(S): There are approximately (10) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Paul A. Naughton DS, ICC, Room 105 Federal Bldg., & Court House, 111 South Wolcott, Casper, WY 82601.

MC 145663 (Sub-1TA), filed November 14, 1978. Applicant: TRANS-POLAR XPRESS, INC., 5611 N.W., Oakridge Court, Kansas City, MO 64151. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Meats, meat products, meat by-products and articles distributed by*

*meat packinghouses*, (except hides and commodities in bulk), from the facilities owned or utilized by George A. Hormel & Co., at Rockville, MO, to all points in GA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): George A. Hormel & Co., P.O. Box 800, Austin MN 55912. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO. 64106.

MC 145675 (Sub-1TA), filed November 9, 1978. Applicant: L. C. WASHBURN AND GARY WASHBURN, a partnership, d.b.a. WASHBURN TRUCKING, CO., Route 3, Box 208, Boaz, AL 35957. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. *Lumber*, from the facilities of East Highlands Company, Forest Products Division, at or near Albertville, Marshall Co., AL, to points in Georgia, Kentucky, Tennessee, Indiana, Ohio and IL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): East Highlands Company, P.O. Box 746, Albertville, AL 35950. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145698 (Sub-1TA), filed November 9, 1978. Applicant: VPA TRUCKING SERVICE, INC., Greenbush Road, Orangeburg, NY 10962. Representative: Lawrence E. Lindeman, Woods, Villalon, Hollengreen & Lindeman, 425 Pennsylvania Avenue & 11th Street NW., Suite 1032, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Automobile parts and accessories, tools and equipment*, between New York, on the one hand, and, on the other, New Jersey, Connecticut, and PA, under a continuing contract, or contracts, with World-Wide Volkswagen Corp., for 180 days. SUPPORTING SHIPPER(S): World-Wide Volkswagen Corp., Greenbush Road, Orangeburg, NY 10962. SEND PROTESTS TO: Maria B. Kejss Trans. Asst., ICC, 26 Federal Plaza, New York, NY 10007.

MC 145717 (Sub-1TA), filed October 31, 1978. Applicant: DAKOTA TRANSPORT, INC., Box 115, Ft. Pierre, SD 57501. Representative: Mark Menard, Rentschler's Truck Plaza, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation pivot systems, pipe products, pumps, motors, fittings, concrete pipe, and pipeline installation equipment*, from Stockton, CA; Pueblo, CO; Waukegan, IL; Minneapolis and St. Paul, MN; Deshler, NE; McPherson, KS; Portland and McNary, OR; and Deni-

son, TX; to points in South Dakota, Nebraska, Wyoming, Colorado, Minnesota, and North Dakota, under a continuing contract, or contracts, with Morris Irrigation, Inc., for 180 days. SUPPORTING SHIPPER(S): Morris Irrigation, Inc. Highway 14-34, P.O. Box 1162, Pierre, SD 57501. SEND PROTESTS TO: J. L. Hammond DS, ICC, Room 455 Federal Building, Pierre, SD 57501.

MC 145738 (Sub-1TA), filed November 9, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Serby & Mitchell, Lenox Towers, 5th Floor, 3390 Peachtree Road, NE, Atlanta, GA 30326. *Industrial chemicals and cleaning compounds*, (except in bulk), from Claymont, DE; Panama City, FL; Gordon, GA; Decatur, IN; Donaldsonville, LA; Baltimore, MD; Everett, MA; Wyandotte, MI; St. Louis, MO; Piscataway, NJ; Philadelphia, PA; Corpus Cristi, TX; Houston, TX; and Hiwassee, VA to the facilities of A. J. Lynch & Company in Berkeley and Los Angeles, CA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): A. J. Lynch & Company, 4560 E. 50th Street, Los Angeles, CA 90058. SEND PROTESTS TO: Floyd A. Johnson DS, ICC, 100 North Main Street, 100 North Main Building, Suite 2006, Memphis, TN 38103.

MC 145742 (Sub-1TA), filed November 15, 1978. Applicant: BOLES TRUCKING, INC., R. R. #1, Ina, IL 62846. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires*, between St. Louis, MO, and Mt. Vernon, IL and *tires, materials, supplies, and machinery* used in the manufacture of tires, between Mayfield, KY, and Mt. Vernon, IL, for the account of The General Tire & Rubber Company, Akron, OH, under a continuing contract, or contracts, with The General Tire & Rubber Company, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Joseph S. Vatalaro Director of Trans., The General Tire & Rubber Company, One General Street, Akron, OH 44329. SEND PROTESTS TO: Charles D. Little DS, ICC, 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 145751 TA, filed November 9, 1978. Applicant: RUSSELL A. PYE TRUCKING, INC., Route 3, Box 345, Ontario, OR 97914. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. (1) *Wooden "T" beams*; and (2) *equipment, materials and supplies used in the manufacturing of wooden "T" beams*; (1) From the

facilities of Ore-Ida Wood I Systems, Inc., at or near Ontario, OR to points in the states of Arizona, California, Colorado, Idaho, New Mexico, Nevada and UT; and (2) from points in the States of Arizona, California, Colorado, Idaho, New Mexico, Nevada and UT to the facilities of Ore-Ida Wood I Systems, Inc., at or near Ontario, OR, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Ore-Ida Wood "I" Systems, Inc., P.O. Box 584, Ontario, OR 97914. SEND PROTESTS TO: Barney L. Hardin DS, ICC, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 145823 TA, filed November 3, 1978. Applicant: DANIEL B. ROEIDER, Route 5, Box 205, Wapakoneta, OH 45895. Representative: David A. Turano, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. *Soybean meal*, (in bulk), from the facilities of Cargill, Inc., at or near Sidney, OH, to points in Indiana, Kentucky, Michigan, Ohio, Pennsylvania and WV, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Cargill, Inc., 2400 Industries, Drive, Sidney, OH 45365. SEND PROTESTS TO: ICC, 313 Federal Office Bldg., 234 Summit Street, Toledo, OH 43604.

By the Commission.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 78-36188 Filed 12-28-78; 8:45 am]

[7035-01-M]

[Finance Docket No. 28909F]

BURLINGTON NORTHERN, INC.

Trackage Rights Over Duluth, Missabe and Iron Range Railway Co. and Duluth, Winnipeg and Pacific Railway Co. near Virginia, Minn.

Burlington Northern, Inc. (BN), 176 East Fifth Street, St. Paul, Minn. 55101 represented by Robert L. Bartholic, Shirley A. Brantingham, and Leah M. Stetzner, 176 East Fifth Street, St. Paul, Minn. 55101, hereby give notice that on the 24th day of November, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for a decision approving and authorizing BN to acquire trackage rights over line owned by the Duluth, Missabe and Iron Range Railway Company (DM&IR) and line owned by the Duluth, Winnipeg and Pacific Railway Company (DWP). BN also seeks amendment pursuant to Section 5(10) of the Act to amend the operating authority granted it in Finance docket

No. 20892, *Great Northern Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company*.

BN seeks authority to obtain trackage rights over lines owned by the DM&IR and DWP which would allow direct access by BN to the recently constructed Minorca Mine and taconite pellet plant facilities of Inland Steel, near Virginia, Minn. Such rights to BN are bridge rights limited to traffic to and from the Minorca facility.

There are two separate segments of track involved for which ICC authority is needed plus a mine spur track for which no authority is needed. The first segment (Connecting tract) is a 0.9 mile portion of the DM&IR line between Virginia, Minn., and Emmert, Minn. BN was granted authority in Finance Docket No. 20892, *Great Northern Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company* to operate over these DM&IR tracks as a bridge. BN requests the Commission to amend this authority to allow an entrance and exit at Shelton, Minn., for operation over DWP tracks as a bridge to the Minorca Mine and facilities.

The second segment (DWP track) is the DWP trackage which connects the DM&IR line between Virginia and Emmert, Minn., to the mine spur owned by DM&IR leading to the Minorca facilities. The mine spur owned by the DM&IR leads from the DWP track to the Minorca Mine and plant.

In the opinion of BN, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28909F and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than February 12, 1979. Such written comments shall in-



clude the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,  
Acting Secretary.

[PR Doc. 78-36348 Filed 12-28-78; 8:45 am]

#### [7035-01-M]

[Docket No. 37039; Ex Parte No. 349]

#### IDAHO INTRASTATE FREIGHT RATES AND CHARGES—1978

Decided: December 20, 1978.

The Idaho railroads (petitioners) have requested this Commission to in-

stitute an investigation of their Idaho intrastate freight rates and charges under sections 13 (3), (4), and (5) and 15(a)(4) of the Interstate Commerce Act, now 49 U.S.C. sections 10704, 11501, 11502, and 11701. They seek an order authorizing them to increase these rates and charges in the same amount as the Commission approved for interstate rates and charges in Ex Parte No. 349, served June 7, 1978.

On May 4, 1978 petitioners requested the Idaho Public Utilities Commission (IPUC) to authorize the same increases as they sought in Ex Parte No. 349. On August 15, 1978, they amended their request, to seek only the increases ultimately authorized in Ex Parte No. 349. On September 6, 1978, IPUC denied the request, for the reason that the petitioners did not break down their intrastate expenses or investments.

Petitioners have presented grounds which justify an investigation.

#### It is ordered:

The petition is granted. An investigation is instituted. The Commission shall determine whether to prescribe Idaho intrastate rail freight rates or charges to remove unlawful discrimination.

All common carriers by railroad operating in Idaho subject to the juris-

cago, Milwaukee, St. Paul & Pacific Railroad Company, The Spokane International Railroad Company, and Washington, Idaho and Montana Railway.

diction of this Commission are made respondents.

All persons who wish to participate in this proceeding and file and receive copies of pleadings shall notify the Office of Proceedings, room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before January 15, 1979. Persons having common interests should consolidate their presentations to the greatest extent possible.

The Commission will serve a list of names and addresses of all persons upon whom service of pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or modified procedure.

A copy of this order shall be served on respondents, and copies shall be sent by certified mail to IPUC and the Governor of Idaho. Copies shall also be deposited in the Office of the Secretary of the Commission at Washington, D.C. and filed with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

This is not a major action significantly affecting the quality of the human environment.

By the Commission, Alan M. Fitzwater, Director, Office of Proceedings.

NANCY L. WILSON,  
Acting Secretary.

[PR Doc. 78-36349 Filed 12-28-78; 8:45 am]

## sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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#### [6320-01-M]

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[M-186]

#### CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., December 18, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Negotiations with the Dutch.

STATUS: Closed.

#### PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary,  
202-673-5068.

**SUPPLEMENTARY INFORMATION:** Negotiations with the Dutch are being held in Washington, D.C. on Friday, December 15, 1978, the Dutch made a proposal which will be taken up again this week. The Department of State has requested the immediate view of the Board. Accordingly, the following Members have voted that agency business requires that the Board meet on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman Marvin S. Cohen  
Member Richard J. O'Melia  
Member Elizabeth E. Bailey

This meeting will concern the ongoing negotiations with the Dutch and the Board's views of the appropriate United States position. Premature public disclosure of the options, plans and opinions of the Board could seriously compromise the United States ability to successfully resolve this issue in the best interests of the United States. Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided

under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting will be closed:

Chairman Marvin S. Cohen  
Member Richard J. O'Melia  
Member Elizabeth E. Bailey

#### PERSONS EXPECTED TO ATTEND

##### Board members

Chairman Marvin S. Cohen  
Member Richard J. O'Melia  
Member Elizabeth E. Bailey

##### Assistants to board members

Mr. Sanford Rederer  
Mr. David M. Kirstein  
Mr. Elias Rodriguez  
Mr. Stephen H. Lachter

##### Office of the Managing Director

Mr. John R. Hancock

##### Bureau of International Aviation

Mr. Donald A. Farmer, Jr.  
Mr. Donald L. Litton  
Mr. Anthony M. Largay  
Mr. Evans E. Wiley

##### Bureau of Pricing and Domestic Aviation

Ms. Barbara A. Clark  
Mr. Doug Leister

##### Office of the Secretary

Mrs. Phyllis T. Kaylor  
Ms. Deborah Lee  
Ms. Louise Patrick

#### GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting be closed to public observation.

GARY J. EDLER,  
Acting General Counsel.

[S-2608-78 Filed 12-27-78; 11:08 am]

#### [6730-01-M]

2

#### FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 4, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Report on Notation Items disposed of during November, 1978.

2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during November, 1978.

3. Report of the Secretary on Applications for Admission to Practice approved during November, 1978, pursuant to delegated authority.

4. Assignment of Informal Dockets by the Secretary during November, 1978.

5. Agreement No. T-3014 between Compania Anonima Venezolana De Navegacion, Compania Peruana De Vapores and Prudential Lines, Inc., providing for sharing of expenses and revenues at Brooklyn, New York.

6. Agreements Nos. 10346 and 10349—Petitions for stay of orders of approval.

7. Special Docket No. 580: D. F. Young, Inc. v. Compagnie Nationale Algerienne de Navigation—Review of Initial Decision.

Portion closed to the public:

1. Issuance of section 21 Orders against independent ocean freight forwarders.

2. Docket No. 77-63: Agreement No. 5700-26 (Modification of a Conference Agreement)—Consideration of record.

[FR S-2609-78 Filed 12-27-78; 11:08 am]

#### [7527-01-M]

3

#### NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME AND DATE: 9:30 a.m.-3 p.m., January 5, 1979.

PLACE: Sheraton Park Hotel, Thomas Paine Room, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: Theme Conference on Literacy:

Welcome  
Introduction of Members of Planning Committee  
Review on Planning Activity to Date  
Conference Details  
Senator McGovern's Resolution  
Proposal from Literacy Action, Inc.  
Other Business

CONTACT PERSON FOR FURTHER INFORMATION:

Jean-Anne South, Program and Planning Consultant, White House Conference on Library and Information Services, 1717 K Street NW., Suite 601, Washington, D.C. 20036, 202-653-6252.



Dated: December 22, 1978.

ALPHONSE F. TREZZA,  
Executive Director.

[S-2610-78 Filed 12-27-78; 11:39 am]

[7910-01-M]

# RENEGOTIATION BOARD.

DATE AND TIME: 9:30 a.m., Tuesday, January 2, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Dow Corning Corporation, fiscal years ended December 31, 1967, 1968, and 1969.

## CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 26, 1978.

HARRY R. VAN CLEVE,  
Acting Chairman.

[S-2612-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

# RENEGOTIATION BOARD.

DATE AND TIME: 10 a.m., Wednesday, January 3, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 and 2 are open to public observation. Matters 3 and 4 are not applicable for status.

## MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Meeting held December 19, 1978, and other Board meetings, if any.
2. Recommendation for Clearance: Southwestern Refining Company, Inc., fiscal year ended December 31, 1973.
3. Approval of Agenda for meeting to be held January 17, 1979.
4. Approval of agenda for other meetings, if any.

## CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,  
Acting Chairman.

[FR Doc. S-2613-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

# RENEGOTIATION BOARD.

DATE AND TIME: 9:30 a.m., Thursday, January 11, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Wallace-Murray Corporation, fiscal year ended December 31, 1969.

## CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,  
Acting Chairman.

[FR Doc. S-2614-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

# RENEGOTIATION BOARD.

DATE AND TIME: 1 p.m., Monday, January 15, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Gentex Corporation, fiscal year ended December 31, 1969.

## CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,  
Acting Chairman.

[S-2615-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

# RENEGOTIATION BOARD.

DATE AND TIME: 1 p.m., Monday, January 22, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

## MATTER TO BE CONSIDERED:

Stupp Corporation, fiscal year ended July 31, 1975.

## CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,  
Acting Chairman.

[FR Doc. S-2616-78 Filed 12-27-78; 2:56 pm]

[3810-70-M]

# UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

TIME AND DATE: 8 a.m., January 8, 1979.

PLACE: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014 (rooms A1-024, A1-017, and A2-054).

## MATTERS TO BE CONSIDERED:

- 8 a.m.—Meeting—Educational Affairs Committee: (1) Faculty appointments; (2) graduate program in biochemistry; (3) policy regarding faculty nominations by the Surgeons General; (4) revised policy on appointments, promotions, and tenure for faculty.
- 8 a.m.—Meeting—Administrative Affairs Committee: (1) Report—Assistant Dean for Administration—(a) Construction update, (b) color scheme for increment II; (2) report—Director Resource Management—Budget and financial plan; (3) Tour—Animal facilities.
- 8:45 a.m.—Meeting—Board of Regents: (1) Report—Administrative Affairs Committee; (2) Report—Educational Affairs Committee; (3) Report—Acting President; (4) Report—Dean, School of Medicine; (5) Report—1978 Liaison Committee on Medical Education Visit; (6) Report—Area Medical Schools Clerkships at National Naval Medical Center and Walter Reed Army Medical Center; (7) Report—4th Year Curriculum; (8) Report—Civilian Federal Service in Fulfillment of Active Duty Obligation; (9) Report—Status of Legislation; (10) Report—Continuing Medical Education Program; (11) Report—1979 Calendar for Board of Regents Meetings (11-12 November, 1979); (12) Report—Associate Dean, School of Medicine—(a) Liaison Committee on Medical Education Self Study, (b) Admissions (Present Status); (14) Report—Departmental Program Review; Randall K. Holmes, M.D., Ph.D., Chairman, Department of Microbiology.
- New business.
- Scheduled meetings: March 19, 1979.

## CONTACT PERSON FOR MORE INFORMATION:

Frank M. Reynolds, Executive Secretary of the Board, 202-295-2111.

Dated: December 26, 1978.

MAURICE W. ROCHE,  
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[S-2611-78 Filed 12-27-78; 12:54 pm]



FRIDAY, DECEMBER 29, 1978

PART II



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**DEPARTMENT OF  
LABOR**

**Office of the Secretary  
and Employment and  
Training Administration**

**COMPREHENSIVE  
EMPLOYMENT AND  
TRAINING ACT (CETA)**

**Transitional Regulations and  
Promulgation of Annual Area  
Wage Adjustment Index**

Federal Register



[4510-30-M]

## Title 29—Labor

## SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR, DEPARTMENT OF LABOR

## PART 93—TRANSITIONAL REGULATIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

## Final Regulations

AGENCY: Department of Labor.

ACTION: Final regulations.

**SUMMARY:** This part promulgates transitional regulations concerning maximum and supplemented wage rates, eligibility, and fraud and abuse provisions applicable to all programs under the Comprehensive Employment and Training Act (CETA), as amended. The purpose of this notice is to advise all interested parties of the changes made in the above areas by the 1978 amendments to the CETA.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION CONTACT: Q04

Roberts T. Jones, Director, Office of Community Employment Programs, Room 5402, 601 D Street N.W., Washington, D.C. 20213, Telephone: (202) 376-6366.

**SUPPLEMENTARY INFORMATION:** The CETA Amendments of 1978 (Pub. L. 95-524) was signed by the President on October 27, 1978. Under Section 4(d) of Pub. L. 95-524, the Department may waive the requirements as to rule-making in implementing the fraud and abuse provisions and the provisions in Section 4(c)(1) (i.e., supplemented and maximum wage rates and eligibility) which become effective after the end of the 90-day period beginning on October 27, 1978. Accordingly, these provisions are being implemented in final form. Where these new regulations implementing the new CETA amendments conflict with the existing CETA regulations, these new regulations issued under the amended law shall control.

While these regulations are being promulgated in final form, the entire set of CETA regulations is currently being drafted and will appear in the *FEDERAL REGISTER* for public comment. This proposal when drafted will provide for complete recodification in Title 20 of the current regulations in Parts 93-99 of Title 29 of the CFR.

Accordingly, Title 29 of the CFR is amended by adding a new Part 93 to read as follows:

## RULES AND REGULATIONS

Sec.

93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).

93.2 Supplementation provisions.

93.3 Participant eligibility—Sections 213, 221 (a) and (b), 236, 122(j), and 607.

93.4 Fraud and abuse provisions.

AUTHORITY: Sec. 4(d), Pub. L. 95-524, 92 Stat. 2018 (29 U.S.C. 801 note).

§ 93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).

(a) The Secretary shall issue and publish annually an area wage adjustment index, which shall include the maximum wage rates for each prime sponsor's area. The wage adjustment index shall be based on the ratio that the annual average wages in regular public and private employment in an area served by a prime sponsor bears to the average of all such areas—

(1) Data on average annual wages shall be derived from information provided by employers to State Employment Security Agencies which are responsible for administering State and Federal unemployment insurance (UI) laws. Each quarter of the year, employers in both the private and public sectors of the economy covered by UI laws are required to submit reports containing data on a complete count of workers during the payroll period including the 12th of each month and the total wages paid to all employees for the calendar quarter. Each covered employer is requested to report employment and wages in the county where workers are employed.

(2) The average annual wage for each county shall be computed as the ratio of total wages paid during the calendar year to average monthly employment for the year in the respective counties. In cases where CETA areas represent county combinations and portions of counties, the average annual wage is computed as a weighted average of the wages in component counties based on relative employment in each. In those instances where more than one CETA area is contained entirely within a county, the average annual wage for each prime sponsor is that for the county as a whole, as the basic payroll data are not produced below the county level.

(b) Wages, including money received for overtime work and time on leave, paid to any public service employment participant from funds under the Act is limited to a full-time rate of \$10,000 per year (or the hourly, weekly, or monthly rate which, if annualized, would equal a full-time rate of \$10,000 per year), except where this maximum is adjusted upward by the Secretary to the amount set forth in the area wage adjustment index described above in paragraph (a). This \$10,000 shall not be adjusted upward by more than 20

percent, except for Alaska. In Alaska, the amount in the area wage adjustment index shall be computed by adjusting the \$10,000 upward by the exact percentage that the area wage index exceeds the national average wage index.

(c) Fringe benefits to any PSE participants may not exceed those regularly afforded to similarly employed non-CETA workers, but shall never exceed those afforded to non-CETA workers earning an amount equal to the maximum wage.

## § 93.2 Supplementation provisions.

(a) *Supplementation Under Title II D—Programs—Section 122(i)(4).* (1) Except as provided in paragraphs (a) (2) and (3) of this section no public service employed participant may be paid wages for any public service employment job from sources other than the Act when such an additional amount would result in a wage in excess of the maximum allowable under § 93.1. This applies even if a participant is entitled to a promotion, a general salary increase or overtime pay. In such cases, such participants must be transferred to other positions or be terminated.

(2) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wages was \$10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted upward above \$10,000 after September 30, 1978.

(3) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than \$10,000 may have such wages supplemented above \$10,000 from non-CETA sources after September 30, 1978, if such increase is a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position.

(b) *Supplementation Under Title VI Programs—Section 609.* Wages paid to public service employees may be supplemented above the maximum wage for the area by additional wages from non-CETA sources only if:

(1) The total amount of funds used in any fiscal year to provide such supplemental wages does not exceed an amount equal to 10 percent of the prime sponsor's Title VI allocation for such fiscal year; and

(2) Such wage supplementation to any public service employee does not exceed:

(i) Ten percent of the maximum wage applicable for the prime sponsor's area; or

(ii) Twenty percent of the maximum wage applicable for the prime sponsor's area in any area where the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the national average wage in such employment.

(3) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wage was \$10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted above \$10,000 after September 30, 1978.

(4) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than \$10,000 may have such wages supplemented above the \$10,000 from non-CETA sources after September 30, 1978, if such increase is the result of a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section.

(5) When a public service employment participant, hired after September 30, 1978, is eligible for a promotion, a general salary increase or overtime pay, the employer shall pay from non-CETA funding sources that amount in excess of the maximum amount payable from CETA funds as well as a pro-rata share of the increased fringe benefits, unless such payment would be in violation of the limitations on public service wage supplementation contained in paragraph (b)(1) of this section. If such payment would be in violation, then the participants affected must be transferred to other positions or be terminated.

## § 93.3 Participant Eligibility—Sections 213, 221(a) and (b), 236, 122(j), and 607.

(a) *Title II B Programs.* A person shall be eligible to participate in a program funded under Title II B only if such person is: (1) Economically disadvantaged; and (2) either unemployed, underemployed, or in school.

(b) *Title II D PSE Programs.* An eligible individual must be a person:

(1) Who is economically disadvantaged; who is unemployed at the time of application, and who except for AFDC recipients, has been unemployed during 15 of the 20 weeks immediately prior to application; and

(2) Who resides within the prime sponsor's jurisdiction.

(i) Except as authorized under paragraph (b)(2)(ii) of this section, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(ii) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(3) No individual shall be eligible to be employed in a public service employment position if such individual has, within six months prior to the termination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(4) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(C) *Title VI PSE Programs.*

An eligible individual must be a person:

(1)(i) Who, except for AFDC recipients, has been unemployed for at least 10 out of the 12 weeks immediately prior to application for participation, and

(ii) Who is unemployed at the time of application; and

(iii) Whose family income does not exceed 100 percent of the lower living standard income level, annualized based on the three-month period prior to the individual's application for participation, and

(iv) Who resides within the prime sponsor's jurisdiction.

(A) Except as authorized under paragraph (B) below, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the

layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(B) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(2) No individual shall be eligible to be employed in a public service employment position if such individual has, within 6 months prior to the termination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(3) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(4) In filling teaching positions in elementary and secondary schools, each prime sponsor shall give special consideration to persons with previous teaching experience who are certified in the prime sponsor's State.

(d) *Indian and Native American, and Migrant and Seasonal Farmworkers PSE Programs.* (1) The current regulations apply for PSE funded under Sections 302 and 303; and

(2) These requirements apply for PSE funded under Titles II D and VI.

(e) *Definitions for Participant Eligibility Determinations.*

The following are the definitions necessary for the determination of participant eligibility:

(1) *Economically Disadvantaged—* means a person who is either:

(i) A member of a family which receives public assistance;

(ii) A member of a family whose income during the previous 6 months, on an annualized basis, was such that—

(A) The family would have qualified for public assistance, if it had applied for such assistance, or

(B) It does not exceed the poverty level, or

(C) It does not exceed 70 percent of the lower living standard income level;

(iii) A foster child on whose behalf State or local government payments are made;

(iv) A client of a sheltered workshop;

(v) A handicapped individual who is living at home and who is unemployed;

(vi) Institutionalized in a prison, hospital, or similar institution; or



(vii) A regular outpatient of a mental hospital, rehabilitation facility, or similar institution.

(2) *Family*—means, except as provided in paragraph (e)(2)(ii) or (iii),

(i) One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage.

(ii) Except for any person who would be eligible for assistance under Title V of the Older Americans Act of 1965 or a handicapped individual who is 16 years of age or older, anyone claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed to be a part of that person's family for the current year.

(iii) An individual 18 or older, who receives less than 50 percent of his/her maintenance from the family, and who is not the head nor the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family of one.

(3) *Family Income*—means all income received from all sources by all members of the family.

(i) Family income shall include:

(A) Gross wages and salary (before deductions), except wages paid for work experience under the Act, but including wages and salary received by individuals in public service employment or on-the-job training;

(B) Net self employment income (gross receipts minus operating expenses);

(C) Other money income received from sources such as net rents, OASI social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities, and other sources of income.

(ii) Family income shall exclude:

(A) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(B) Imputed value of owner-occupied property i.e., rental value;

(C) Public assistance payments;

(D) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or Disability Insurance payments received under Title II of the Social Security Act;

(E) Federal, State or local unemployment benefits;

(F) Payments made to participants in employment and training programs, except wages paid for PSE and OJT;

(G) Capital gains and losses;

(H) One time, unearned income, such as but not limited to:

(i) Payments received for a limited, fixed term under income maintenance programs and supplemental (private) unemployment benefit plans;

(2) (One-time) or fixed-term scholarship and fellowship grants;

(3) Accident, health, and casualty insurance proceeds;

(4) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(5) One-time awards and gifts;

(6) Inheritances, including fixed term annuities;

(7) Fixed term workers' compensation awards;

(8) Terminal leave pay;

(9) Soil bank payments;

(10) Agriculture crop stabilization payments;

(i) Allowances or pay received by any person while serving on active duty in the Armed Forces; and

(j) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(K) Payments received under the Trade Readjustment Act and the Redwood Forest Act.

(4) *Lower Living Standard Income Level*—means that income level (adjusted for selected Standard Metropolitan Statistical Areas and regional metropolitan and nonmetropolitan differences and family use) determined annually by the Secretary based upon the most recent lower living family budget level issued by the Bureau of Labor Statistics.

(5) *Low income level*—means \$7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship of \$7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest \$1,000.

(6) *Public assistance*—means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

(7) *Underemployed persons*—means (i) Persons who are working part time but seeking full time work; and (ii) Persons who are working full time but receiving wages, not in excess of, the higher of either:

(A) The poverty level; or

(B) Seventy percent of the lower living standard income level.

(8) *Unemployed persons*—means for purposes of determining eligibility

(i) A person who is without a job for at least seven consecutive days prior to application for participation. A person shall be considered as being without a job if, for any calendar week, such person;

(A) Worked no more than 10 hours, and

(B) Earned no more than \$30, and

(C) Was seeking and available for work; or

(ii) A person who is

(A) A client of a sheltered workshop;

(B) A prisoner eligible for, or in, a work release program, or

(C) Institutionalized in a hospital or similar institution; or

(iii) A person who is 18 years of age or older whose family receives public assistance, or whose family would be eligible to receive public assistance if both parents were not present in the home; or

(iv) A person who is a veteran who has not obtained permanent unsubsidized employment since being released from active duty.

#### § 93.4 Fraud and abuse provisions.

Section 4(b) of the CETA Amendments of 1978 provides for the implementation of provisions relating to the prohibition of fraud and other abuses. Currently, the October 18, 1977, regulations and the appropriate OMB circulars referenced in those regulations contain the majority of the fraud and abuse provisions found in the new CETA Amendments. Since the October 18, 1977, regulations remain in effect, regional offices should instruct prime sponsors of the necessity for their continued compliance with the current requirements.

In addition, the following provisions implement sections in the CETA Amendments of 1978 that prescribe either more specific requirements than in the previous legislation or new fraud and abuse provisions:

(a) *Maintenance of Effort—121(e).*

(1) Although the following provisions are substantially the same as those which currently appear in the October 18, 1977, regulations it should be noted that under this new legislation they now apply to all programs under CETA, not just PSE programs.

(2) To ensure maintenance of effort under all programs under the Act—

(i) The recipient shall ensure that such programs—

(A) Result in an increase in employment and training opportunities over those which would otherwise be available;

(B) Not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits; and

(C) Not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(ii) No participant shall be used to provide services normally provided by temporary, part-time or seasonal workers or through contracting such services out, or to fill full-time vacancies, unless documentation is maintained that clearly demonstrates that such action does not constitute the use of funds under the Act for purposes

that otherwise would be supported by other funds.

(iii) Funds under the Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs.

(b) *Unionization and Anti-unionization Activities—Sections 121(n) and 123(g).* (1) No funds under the Act shall be used in any way to either promote or oppose unionization.

(2) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains union security provisions.

(c) *Independent Monitoring Unit—Section 121(g).* (1) Prime sponsors shall establish a monitoring unit which shall be independent of, and not accountable to, those units in a prime sponsor's organization being monitored. Such a unit shall be functionally discrete from program operations and shall be responsible for monitoring program compliance. Prime sponsors shall immediately initiate organizational adjustments necessary to provide for this unit to be in place and fully functioning by April 1, 1979.

(2) The prime sponsor shall ensure that this monitoring unit is adequately staffed and trained.

(3) The prime sponsor shall further require each subgrantee, which has the administrative capability as determined by the prime sponsor, to establish and maintain an independent monitoring unit which shall monitor the subgrantee's program through review of program data, observation of program operations and examination of program records to ensure compliance with

(i) The Act and the regulations;

(ii) The provisions of its subgrant;

(iii) The provision of subgrants awarded by it.

(d) *Charging of Fees—Section 123(g).*

(1) No funds shall be used to pay a fee for the placement of any person in a program under this Act.

(2) No person or organization, including private placement agencies, may charge a fee for the placement or referral of any person in or to such program.

(3) Any contract for payment of such fees shall be void in law and no participant shall be liable for such fees.

(4) Nothing in this section shall prohibit the recipient from entering into a subgrant or contract for the purpose of obtaining outreach, recruitment and/or intake services as part of its approved intake system.

(e) *Conflicts of Interest—Section 123(g).* (1) No member of any advisory council under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which such member directly represents) or on any matter which would financially benefit such member or any organization such member represents.

(2) Each recipient and its employees shall avoid financial conflict of interest in the conduct of procurement activities, including the procurement activities of its subgrantees and contractors by complying with the recipient code of conduct requirements set forth in Office of Management and Budget (OMB) Circulars A-102, Attachment 0 and A-110, Attachment 0.

No nongovernmental individual, institution or organization shall be paid funds provided under the Act to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

(f) *Kickbacks—Section 123(g).* No officer, employee or agent of any recipient shall solicit or accept gratuities, favors or anything of monetary value from any person in return for preferential treatment.

(g) *Commingleing of funds—Section 123(g).* Recipients shall comply with the applicable requirements of OMB Circular A-102, Attachment A and A-110, Attachment A, regarding separate bank accounts.

(h) *Political Patronage—Section 123(g).* (1) No recipient may select, reject, or promote a participant based on that individual's political affiliation

or beliefs. The selection or advancement of employees as a reward for political services, or as a form of political patronage, whether partisan or not, is prohibited.

(2) There shall be no referrals for CETA jobs or training, nor selection of subgrantees or contractors based on political affiliation.

(i) *Political Activities—Section 123(g).* No program may involve partisan or nonpartisan political activities.

(1) No participant may engage in partisan or nonpartisan political activities during working hours.

(2) No participant may at any time engage in partisan or nonpartisan political activities in which such participant represents himself/herself as a spokesperson for the CETA program.

(3) No participant may be employed or outstationed in the office of a member of Congress or a State or local legislator. No person shall be employed in a legislative capacity on any legislative committee or staff.

(4) No participant may be employed or outstationed in positions involving political activities in the offices of other elected or appointed officials, such as Mayors, County Executives, or Governors, or as staff of Executive Committees. Placement of participants in such nonpolitical positions is permissible.

(j) *Lobbying Activities—Section 123(g).* No funds may be used—

(1) To attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress (18 U.S.C. 1913); or

(2) For lobbying State or local legislators.

(k) *Religious and Anti-religious Activities—Section 123(g).* (1) No funds may be used in support of any religious activity. Funds may not be used to support anti-religious activities.

(2) No participant may be employed in the construction, operation, or maintenance of any part of any facility that is used or will be used for sectarian instruction or as a place of religious worship.

Signed this 19th day of December 1978 at Washington, D.C.

F. RAY MARSHALL,  
Secretary of Labor.

[FR Doc. 78-35883 Filed 12-28-78; 8:45 am]



[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

COMPREHENSIVE EMPLOYMENT AND  
TRAINING ACT (CETA) PRIME SPONSORS

Promulgation of the Annual Area Wage  
Adjustment Index

AGENCY: Employment and Training  
Administration, Labor.

ACTION: Notice.

SUMMARY: This notice promulgates  
the annual area wage adjustment  
index for Fiscal Year 1979 as required  
under Section 122(i)(3) of the Compre-  
hensive Employment and Training Act  
Amendments of 1978.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION  
CONTACT:

Roberts T. Jones, Director, Office of  
Community Employment Programs,  
Room 5402, 601 D Street, N.W.,  
Washington, D.C. 20213, Telephone:  
(202) 376-6366.

U.S. DEPARTMENT OF LABOR,  
EMPLOYMENT AND TRAINING  
ADMINISTRATION,  
Washington, D.C. 20213.

Directive: Field Memorandum No. 75-79.  
To: All Regional Administrators.

From: Barbara Farmer for Don A. Balcer,  
Acting Administrator, Field Operations.  
Subject: Maximum CETA PSE Wages and  
Annual Average Wages for Prime Spon-  
sors.

1. Purpose. To transmit the annual area  
wage adjustment index for FY '79.

2. Background. Section 122(i) of the  
CETA Amendments of 1978 provides that  
CETA funds shall not be used to pay wages  
to any individual employed in a public serv-  
ice job at a rate in excess of \$10,000 per  
year, but such maximum shall be adjusted  
upward for particular areas served by prime  
sponsors as determined by the Secretary on  
the basis of a wage adjustment index. This  
maximum annual wage provision becomes  
effective on January 26, 1979. Section 122(i)  
also provides that the annual federally sup-  
ported wage rate for public service employ-  
ment participants shall not exceed \$7,200,  
adjusted on an area basis in accordance with  
the area wage adjustment index. The  
annual average wage provision is effective  
on April 1, 1979.

3. Methodology used to compute the  
annual area wage adjustment index.

a. Data on average annual wages are de-  
rived from information provided by employ-  
ers to State Employment Security Agencies  
which are responsible for administering  
State and Federal unemployment insurance  
(UI) laws. Each quarter of the year, employ-  
ers in both the private and public sectors of  
the economy covered by UI laws are re-  
quired to submit reports containing data on  
a complete count of workers during the pay-  
roll period including the 12th of each  
month and the total wages paid to all em-  
ployees for the calendar quarter. Each cov-  
ered employer is requested to report em-  
ployment and wages in the county where  
workers are employed.

b. The average annual wage for each  
county is computed as the ratio of total  
wages paid during the calendar year to aver-  
age monthly employment for the year in  
the respective counties. In cases where  
CETA areas represent county combinations  
and portions of counties, the average annual  
wage is computed as a weighted average of  
the wages in component counties based on  
relative employment in each. In those in-  
stances where more than one CETA area is  
contained entirely within a county, the  
average annual wage for each prime sponsor  
is that for the county as a whole, as the  
basic payroll data are not produced below  
the county level.

4. Application of the area wage adjust-  
ment index. a. Specific instructions for ap-  
plication of maximum wage provisions  
which are effective on January 26, 1979,  
shall be included in the transition provi-  
sions which will be transmitted by FM and  
also published in the FEDERAL REGISTER.

b. Instructions regarding the application  
of the annual average wage provisions  
which are effective on April 1, 1979, will be  
included in the proposed and final CETA  
Regulations to be published in the FEDERAL  
REGISTER.

5. Action required. Regional offices are to  
immediately transmit the attached index to  
prime sponsors for use in the planning of  
programs under title IID and title VI and in  
the preparation of modifications due in the  
regional offices on December 31, 1978.

6. Inquiries. Any questions regarding this  
issuance may be directed to Hugh Davies or  
Joan Shelly on 8-376-7006.

7. Attachment. (RAs only) 1977 Average  
Annual Wages and Index for Prime Spon-  
sors.

[4510-30-C]

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                        | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|--------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| ALABAMA                                                |                                                     |                  |                  |
| Birmingham<br>Consortium<br>(Jefferson<br>County)..... | 100.8                                               | 10080            | 7258             |
| Huntsville<br>Consortium<br>(Madison<br>County).....   | 106.0                                               | 10600            | 7632             |
| Tuscaloosa County.....                                 | 87.2                                                | 10000            | 6635             |
| Mobile Consortium.....                                 | 90.2                                                | 10000            | 6635             |
| Montgomery Consortium....                              | 85.1                                                | 10000            | 6635             |
| Balance of Alabama.....                                | 83.2                                                | 10000            | 6635             |
| ALASKA                                                 |                                                     |                  |                  |
| Anchorage Municipality<br>Division.....                | 183.3                                               | 18330            | 13198            |
| Balance of Alaska.....                                 | 198.8                                               | 19880            | 14314            |
| ARIZONA                                                |                                                     |                  |                  |
| Phoenix City.....                                      | 96.4                                                | 10000            | 6941             |
| Tucson/Pima Csrt<br>(Pima Cn.).....                    | 87.9                                                | 10000            | 6635             |
| Bal of Maricopa Co<br>Less Phoenix.....                | 96.4                                                | 10000            | 6941             |
| Bal of Arizona.....                                    | 91.5                                                | 10000            | 6635             |
| ARKANSAS                                               |                                                     |                  |                  |
| Central Arkansas<br>Consortium.....                    | 89.3                                                | 10000            | 6635             |
| Balance of Arkansas.....                               | 76.1                                                | 10000            | 6635             |
| Texarkana<br>Consortium<br>(Arkansas Texas).....       | 87.6                                                | 10000            | 6635             |
| CALIFORNIA                                             |                                                     |                  |                  |
| Berkeley City.....                                     | 114.8                                               | 11480            | 8266             |
| Oakland City.....                                      | 114.8                                               | 11480            | 8266             |
| Butte County.....                                      | 82.3                                                | 10000            | 6635             |
| Richmond City.....                                     | 107.0                                               | 10700            | 7704             |
| Fresno Csrt<br>(Fresno Cn.).....                       | 81.1                                                | 10000            | 6635             |
| Humboldt County.....                                   | 98.4                                                | 10000            | 7085             |
| Imperial County.....                                   | 73.9                                                | 10000            | 6635             |
| Kern County.....                                       | 95.2                                                | 10000            | 6854             |
| Glendale City.....                                     | 109.9                                               | 10990            | 7913             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                                                           | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-------------------------------------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Long Beach City.....                                                                      | 109.9                                               | 10990            | 7913             |
| Los Angeles City.....                                                                     | 109.9                                               | 10990            | 7913             |
| Pasadena City.....                                                                        | 109.9                                               | 10990            | 7913             |
| Torrance City.....                                                                        | 109.9                                               | 10990            | 7913             |
| Marin County.....                                                                         | 92.2                                                | 10000            | 6638             |
| Merced County.....                                                                        | 73.3                                                | 10000            | 6635             |
| Monterey County.....                                                                      | 88.4                                                | 10000            | 6635             |
| Orange County<br>Manpower Consortium<br>(Orange Co.).....                                 | 101.2                                               | 10120            | 7286             |
| Sacramento<br>Consortium.....                                                             | 113.0                                               | 11300            | 8136             |
| San Diego Retc<br>(San Diego Co.).....                                                    | 96.7                                                | 10000            | 6962             |
| San Francisco<br>City/County.....                                                         | 124.1                                               | 12000            | 8935             |
| Stockton/San<br>Joaquin Manp.<br>Csr. (San Joaquin Co.)...                                | 92.2                                                | 10000            | 6638             |
| San Luis Obispo<br>County.....                                                            | 87.5                                                | 10000            | 6635             |
| San Mateo County.....                                                                     | 120.0                                               | 12000            | 8640             |
| Santa Barbara County.....                                                                 | 89.7                                                | 10000            | 6635             |
| Sunnyvale City.....                                                                       | 114.7                                               | 11470            | 8258             |
| Santa Cruz County.....                                                                    | 78.7                                                | 10000            | 6635             |
| Shasta County.....                                                                        | 99.0                                                | 10000            | 7128             |
| Solano County.....                                                                        | 109.3                                               | 10930            | 7870             |
| Sonoma County.....                                                                        | 90.4                                                | 10000            | 6635             |
| Stanislaus County.....                                                                    | 86.5                                                | 10000            | 6635             |
| Tulare County.....                                                                        | 71.0                                                | 10000            | 6635             |
| Ventura County.....                                                                       | 95.8                                                | 10000            | 6898             |
| Yolo County.....                                                                          | 89.2                                                | 10000            | 6635             |
| Balance of Alameda Co.<br>Less Oakland and<br>Berkeley.....                               | 114.8                                               | 11480            | 8266             |
| Balance of Contra<br>Costa County<br>Co. Less City of<br>Richmond.....                    | 107.0                                               | 10700            | 7704             |
| Inland Manpower<br>Assoc.....                                                             | 90.3                                                | 10000            | 6635             |
| City of Los Angeles<br>Co Less<br>Glendale, Long<br>Bch, Pasadena,<br>LA, & Torrance..... | 109.9                                               | 10990            | 7913             |
| Santa Clara Valley.....                                                                   | 114.7                                               | 11470            | 8258             |
| Balance of California ....                                                                | 84.4                                                | 10000            | 6635             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                         | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|---------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| COLORADO                                                |                                                     |                  |                  |
| Adams County.....                                       | 99.7                                                | 10000            | 7178             |
| Arapahoe County.....                                    | 96.9                                                | 10000            | 6977             |
| Boulder County.....                                     | 96.4                                                | 10000            | 6941             |
| Denver City/County.....                                 | 108.5                                               | 10850            | 7812             |
| Colorado Springs<br>Consortium (El Paso<br>County)..... | 83.0                                                | 10000            | 6635             |
| Jefferson County<br>Consortium.....                     | 102.5                                               | 10250            | 7380             |
| Larimer County.....                                     | 84.9                                                | 10000            | 6635             |
| Pueblo County.....                                      | 101.0                                               | 10100            | 7272             |
| Weld County.....                                        | 93.0                                                | 10000            | 6696             |
| Balance of Colorado.....                                | 80.9                                                | 10000            | 6635             |
| CONNECTICUT                                             |                                                     |                  |                  |
| Bridgeport<br>Consortium.....                           | 110.4                                               | 11040            | 7949             |
| Hartford<br>Consortium.....                             | 103.4                                               | 10340            | 7445             |
| New Haven<br>Consortium.....                            | 95.6                                                | 10000            | 6883             |
| Stamford<br>Consortium.....                             | 113.1                                               | 11310            | 8143             |
| Waterbury City.....                                     | 95.6                                                | 10000            | 6883             |
| Balance of<br>Connecticut.....                          | 100.2                                               | 10020            | 7214             |
| DELAWARE                                                |                                                     |                  |                  |
| Wilmington City.....                                    | 113.6                                               | 11360            | 8179             |
| Delaware Manp.<br>Consortium.....                       | 104.3                                               | 10430            | 7510             |
| DISTRICT OF COLUMBIA                                    |                                                     |                  |                  |
| District of Columbia.....                               | 132.5                                               | 12000            | 9540             |
| FLORIDA                                                 |                                                     |                  |                  |
| Alachua County.....                                     | 82.4                                                | 10000            | 6635             |
| Brevard County.....                                     | 97.0                                                | 10000            | 6984             |
| Broward Consortium<br>(Broward County).....             | 90.8                                                | 10000            | 6635             |
| Escambia County.....                                    | 89.8                                                | 10000            | 6635             |
| Hillsborough Consortium<br>(Hillsborough County).....   | 89.1                                                | 10000            | 6635             |
| Lee County.....                                         | 80.3                                                | 10000            | 6635             |
| Manatee County.....                                     | 78.5                                                | 10000            | 6635             |
| Marion County.....                                      | 73.1                                                | 10000            | 6635             |
| Okaloosa County.....                                    | 81.2                                                | 10000            | 6635             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                                     | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|---------------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Orange<br>County/Orlando<br>Consortium<br>(Orange County).....      | 87.3                                                | 10000            | 6635             |
| Palm Beach County.....                                              | 92.4                                                | 10000            | 6653             |
| Pasco County.....                                                   | 72.3                                                | 10000            | 6635             |
| Pinellas County<br>Consortium<br>(Pinellas County).....             | 81.4                                                | 10000            | 6635             |
| Sarasota County.....                                                | 81.5                                                | 10000            | 6635             |
| Seminole County.....                                                | 76.8                                                | 10000            | 6635             |
| Volusia County.....                                                 | 73.9                                                | 10000            | 6635             |
| Heartland Manpower<br>Consortium.....                               | 84.7                                                | 10000            | 6635             |
| Leon/Gadson Consortium....                                          | 82.5                                                | 10000            | 6635             |
| Miami/Dade Consortium.....                                          | 97.5                                                | 10000            | 7020             |
| N.E. Florida<br>Manpower Consortium.....                            | 92.6                                                | 10000            | 6667             |
| Balance of Florida.....                                             | 76.6                                                | 10000            | 6635             |
| GEORGIA                                                             |                                                     |                  |                  |
| Savannah/Chatham<br>Consortium<br>(Chatham County).....             | 90.6                                                | 10000            | 6635             |
| Clayton County.....                                                 | 102.9                                               | 10290            | 7409             |
| Cobb County.....                                                    | 94.3                                                | 10000            | 6790             |
| Bal of DeKalb<br>County, Co.<br>Less City of<br>Atlanta (Part)..... | 101.0                                               | 10100            | 7272             |
| Atlanta City.....                                                   | 109.3                                               | 10930            | 7870             |
| Gwinnett Co.....                                                    | 97.4                                                | 10000            | 7013             |
| Columbus Area<br>Consortium(Georgia<br>Part, Columbus SMSA)....     | 81.6                                                | 10000            | 6635             |
| CSRA Consortium.....                                                | 82.4                                                | 10000            | 6635             |
| Bal of Fulton County<br>Less City of Atlanta<br>(Part).....         | 109.7                                               | 10970            | 7898             |
| Mid Georgia<br>Consortium.....                                      | 92.9                                                | 10000            | 6689             |
| Balance of Georgia.....                                             | 77.0                                                | 10000            | 6635             |
| HAWAII                                                              |                                                     |                  |                  |
| Honolulu<br>City/County.....                                        | 89.5                                                | 10000            | 6635             |
| Hawaii Bal of<br>State.....                                         | 81.3                                                | 10000            | 6635             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                   | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|---------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| IDAHO                                             |                                                     |                  |                  |
| Idaho Statewide<br>Consortium.....                | 89.5                                                | 10000            | 6635             |
| ILLINOIS                                          |                                                     |                  |                  |
| Chicago City.....                                 | 116.9                                               | 11690            | 8417             |
| Dupage County.....                                | 107.8                                               | 10780            | 7762             |
| Lake County.....                                  | 107.3                                               | 10730            | 7726             |
| LaSalle County.....                               | 100.8                                               | 10080            | 7258             |
| McHenry County.....                               | 95.6                                                | 10000            | 6883             |
| McLean County.....                                | 94.0                                                | 10000            | 6768             |
| Macon County.....                                 | 109.1                                               | 10910            | 7855             |
| Peoria County Consortium.                         | 108.8                                               | 10880            | 7834             |
| Rock Island County.....                           | 122.9                                               | 12000            | 8849             |
| Tazewell County.....                              | 137.1                                               | 12000            | 9871             |
| Champaign Consortium....                          | 88.3                                                | 10000            | 6635             |
| Bal of Cook County, Co.<br>Less Chicago City..... | 116.9                                               | 11690            | 8417             |
| Kane Co. Csrt.....                                | 96.5                                                | 10000            | 6948             |
| Madison County Consortium                         | 108.0                                               | 10800            | 7776             |
| Rockford Consortium.....                          | 108.8                                               | 10880            | 7834             |
| Sangamon County Con-<br>sortium.....              | 94.8                                                | 10000            | 6826             |
| Shawnee Consortium.....                           | 78.8                                                | 10000            | 6635             |
| St. Clair Consortium.....                         | 93.9                                                | 10000            | 6761             |
| Will County Consortium...                         | 109.6                                               | 10960            | 7891             |
| Balance of Illinois.....                          | 90.8                                                | 10000            | 6635             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                                        | INDEX (NATIONAL<br>ANNUAL WAGES<br>11 425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|------------------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| <b>INDIANA</b>                                                         |                                                     |                  |                  |
| Elkhart County.....                                                    | 97.5                                                | 10000            | 7020             |
| Gary City.....                                                         | 126.2                                               | 12000            | 9086             |
| Hammond City.....                                                      | 126.2                                               | 12000            | 9086             |
| La Porte County.....                                                   | 93.1                                                | 10000            | 6703             |
| Madison County.....                                                    | 121.1                                               | 12000            | 8719             |
| Indianapolis City/<br>Marion Co.....                                   | 110.0                                               | 11000            | 7920             |
| South Bend City.....                                                   | 97.6                                                | 10000            | 7027             |
| Tippecano County.....                                                  | 96.2                                                | 10000            | 6926             |
| Vigo County.....                                                       | 93.8                                                | 10000            | 6754             |
| Delaware Consortium.....                                               | 100.5                                               | 10050            | 7236             |
| Ft. Wayne Consortium.....                                              | 99.9                                                | 10000            | 7193             |
| Ball of Lake<br>County, Co. Less<br>Cities of Gary and<br>Hammond..... | 126.2                                               | 12000            | 9086             |
| Southwestern<br>Consortium.....                                        | 97.5                                                | 10000            | 7020             |
| Ball of St. Joseph<br>County, Co. Less South<br>Bend City.....         | 97.6                                                | 10000            | 7027             |
| Balance of Indiana.....                                                | 93.3                                                | 10000            | 6718             |
| <b>IOWA</b>                                                            |                                                     |                  |                  |
| Blackhawk County.....                                                  | 110.6                                               | 11060            | 7963             |
| Linn County Manpower<br>Consortium.....                                | 103.2                                               | 10320            | 7430             |
| Davenport City.....                                                    | 105.6                                               | 10560            | 7603             |
| Woodbury County.....                                                   | 90.4                                                | 10000            | 6635             |
| Central Iowa<br>Regional Assn.<br>of Local Governments.....            | 95.1                                                | 10000            | 6847             |
| Balance of Iowa.....                                                   | 84.7                                                | 10000            | 6635             |
| <b>KANSAS</b>                                                          |                                                     |                  |                  |
| Wichita City.....                                                      | 95.9                                                | 10000            | 6905             |
| Topeka Consortium<br>(Shawnee County).....                             | 92.9                                                | 10000            | 6689             |
| Kansas City<br>Consortium<br>(Wyandotte County).....                   | 111.9                                               | 11190            | 8057             |
| Johnson/Leavenworth<br>Consortium.....                                 | 94.4                                                | 10000            | 6797             |
| Balance of Kansas.....                                                 | 81.0                                                | 10000            | 6635             |
| <b>KENTUCKY</b>                                                        |                                                     |                  |                  |
| Louisville/Jefferson<br>Consortium (Jefferson<br>County).....          | 102.8                                               | 10000            | 7402             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                     | INDEX (NATIONAL<br>ANNUAL WAGES<br>11 425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-----------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Kenton County.....                                  | 82.4                                                | 10000            | 6635             |
| Blue Grass Manpower<br>Consortium.....              | 89.7                                                | 10000            | 6635             |
| Eastern Kentucky<br>Rural Cep.....                  | 102.9                                               | 10290            | 7409             |
| Balance of Kentucky.....                            | 84.4                                                | 10000            | 6635             |
| <b>LOUISIANA</b>                                    |                                                     |                  |                  |
| Shreveport City.....                                | 90.4                                                | 10000            | 6635             |
| Baton Rouge<br>City/East Baton<br>Rouge Parish..... | 103.3                                               | 10330            | 7438             |
| Jefferson Parish.....                               | 97.1                                                | 10000            | 6991             |
| Lafayette Parish.....                               | 98.0                                                | 10000            | 7056             |
| New Orleans<br>City/Orleans<br>Parish.....          | 98.9                                                | 10000            | 7121             |
| Quachita Parish.....                                | 91.6                                                | 10000            | 6635             |
| Rapides Parish.....                                 | 78.1                                                | 10000            | 6635             |
| Calcasieu/Jeff<br>Consortium.....                   | 101.4                                               | 10140            | 7301             |
| Balance of Louisiana....                            | 93.8                                                | 10000            | 6754             |
| <b>MAINE</b>                                        |                                                     |                  |                  |
| Cumberland County.....                              | 84.2                                                | 10000            | 6635             |
| Kennebec County.....                                | 83.6                                                | 10000            | 6635             |
| York County.....                                    | 70.2                                                | 10000            | 6635             |
| Penobscot<br>Consortium.....                        | 82.4                                                | 10000            | 6635             |
| CETA Balance of<br>Maine.....                       | 75.9                                                | 10000            | 6635             |
| <b>MARYLAND</b>                                     |                                                     |                  |                  |
| Montgomery County.....                              | 108.7                                               | 10870            | 7826             |
| Prince Georges<br>County.....                       | 97.8                                                | 10000            | 7042             |
| Baltimore Consortium...                             | 100.3                                               | 10030            | 7222             |
| Western Maryland<br>Consortium.....                 | 92.3                                                | 10000            | 6646             |
| Balance of Maryland....                             | 77.7                                                | 10000            | 6635             |
| <b>MASSACHUSETTS</b>                                |                                                     |                  |                  |
| Boston City.....                                    | 108.4                                               | 10840            | 7805             |
| Cambridge<br>Consortium.....                        | 103.7                                               | 10370            | 7466             |



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|                                                          | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|----------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Worcester Consortium.....                                | 90.4                                                | 10000            | 6635             |
| Hampden County (Springfield Consortium).....             | 89.7                                                | 10000            | 6635             |
| Brockton Consortium.....                                 | 82.3                                                | 10000            | 6635             |
| Lowell Consortium.....                                   | 103.7                                               | 10370            | 7466             |
| New Bedford Consortium.....                              | 79.2                                                | 10000            | 6635             |
| Fall River Consortium.....                               | 79.1                                                | 10000            | 6635             |
| CETA Balance of Massachusetts.....                       | 93.4                                                | 10000            | 6725             |
| MICHIGAN                                                 |                                                     |                  |                  |
| Bay County.....                                          | 108.1                                               | 10810            | 7783             |
| Berrien County.....                                      | 100.6                                               | 10060            | 7243             |
| Calhoun County.....                                      | 111.1                                               | 11110            | 7999             |
| Kalamazoo County.....                                    | 107.3                                               | 10730            | 7726             |
| Warren City.....                                         | 132.5                                               | 12000            | 9540             |
| Monroe County.....                                       | 113.1                                               | 11310            | 8143             |
| Oakland County.....                                      | 120.7                                               | 12000            | 8690             |
| Ottawa County.....                                       | 93.0                                                | 10000            | 6696             |
| Saginaw County.....                                      | 128.2                                               | 12000            | 9230             |
| St. Clair County.....                                    | 99.8                                                | 10000            | 7186             |
| Ann Arbor City.....                                      | 118.1                                               | 11810            | 8503             |
| Dearborn City.....                                       | 134.2                                               | 12000            | 9662             |
| Detroit City.....                                        | 134.2                                               | 12000            | 9662             |
| Livonia City.....                                        | 134.2                                               | 12000            | 9662             |
| Bal of Washtenaw Co Less Ann Arbor City.....             | 118.1                                               | 11810            | 8503             |
| Flint/Genesee Consortium.....                            | 135.8                                               | 12000            | 9778             |
| Jackson Consortium.....                                  | 105.6                                               | 10560            | 7603             |
| Kent Consortium.....                                     | 99.2                                                | 10000            | 7142             |
| Lansing Consortium.....                                  | 113.7                                               | 11370            | 8186             |
| Bal of Macomb County, Co. Less City of Warren.....       | 132.5                                               | 12000            | 9540             |
| Muskegon Consortium.....                                 | 102.0                                               | 10200            | 7344             |
| Bal of Wayne Co Less Detroit, Dearborn, and Livonia..... | 134.2                                               | 12000            | 9662             |
| Balance of Michigan.....                                 | 90.5                                                | 10000            | 6635             |

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|                                                                    | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|--------------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| MINNESOTA                                                          |                                                     |                  |                  |
| Dakota County.....                                                 | 91.1                                                | 10000            | 6635             |
| Minneapolis City.....                                              | 102.6                                               | 10260            | 7387             |
| St. Paul City.....                                                 | 106.6                                               | 10660            | 7675             |
| Duluth City.....                                                   | 94.5                                                | 10000            | 6804             |
| Bal of Hennepin Co. Less City of Minneapolis....                   | 102.6                                               | 10260            | 7387             |
| Bal of Ramsey County, Co. Less St. Paul City....                   | 106.6                                               | 10660            | 7675             |
| Region III Consortium.....                                         | 94.3                                                | 10000            | 6790             |
| Rural Minnesota CEP.....                                           | 68.3                                                | 10000            | 6635             |
| Quad Counties Consortium.....                                      | 92.1                                                | 10000            | 6635             |
| Balance of Minnesota.....                                          | 77.5                                                | 10000            | 6635             |
| MISSISSIPPI                                                        |                                                     |                  |                  |
| Harrison County.....                                               | 76.1                                                | 10000            | 6635             |
| Jackson Consortium.....                                            | 88.5                                                | 10000            | 6635             |
| Balance of Mississippi....                                         | 76.6                                                | 10000            | 6635             |
| MISSOURI                                                           |                                                     |                  |                  |
| Springfield City.....                                              | 84.2                                                | 10000            | 6635             |
| Independence City.....                                             | 104.4                                               | 10440            | 7517             |
| St. Charles County.....                                            | 87.7                                                | 10000            | 6635             |
| St. Louis County.....                                              | 106.3                                               | 10630            | 7654             |
| St. Louis City.....                                                | 111.8                                               | 11180            | 8050             |
| Bal of Jackson Co Less Cities of Independence & Kansas (PART)..... | 104.4                                               | 10440            | 7517             |
| Jefferson/Franklin Consortium.....                                 | 82.1                                                | 10000            | 6635             |
| Kansas City Consortium.....                                        | 104.9                                               | 10490            | 7553             |
| Balance of Missouri.....                                           | 74.5                                                | 10000            | 6635             |
| MONTANA                                                            |                                                     |                  |                  |
| Butte Rural CEP.....                                               | 93.3                                                | 10000            | 6718             |
| Balance of Montana.....                                            | 83.7                                                | 10000            | 6635             |
| NEBRASKA                                                           |                                                     |                  |                  |
| Lincoln City.....                                                  | 80.9                                                | 10000            | 6635             |
| Omaha Consortium (Nebraska Part, Omaha SMSA).....                  | 95.3                                                | 10000            | 6862             |
| Balance of Nebraska.....                                           | 76.7                                                | 10000            | 6635             |



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|                                                        | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|--------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| <b>NEVADA</b>                                          |                                                     |                  |                  |
| Las Vegas Csrst.<br>(Clark Co.).....                   | 99.1                                                | 10000            | 7135             |
| Washoe County.....                                     | 97.2                                                | 10000            | 6998             |
| Balance of Nevada.....                                 | 93.3                                                | 10000            | 6718             |
| <b>NEW HAMPSHIRE</b>                                   |                                                     |                  |                  |
| Hillsborough<br>County.....                            | 86.4                                                | 10000            | 6635             |
| Rockingham/Strafford<br>Consortium.....                | 78.0                                                | 10000            | 6635             |
| Balance of New Hampshire...                            | 77.7                                                | 10000            | 6635             |
| <b>NEW JERSEY</b>                                      |                                                     |                  |                  |
| Atlantic County.....                                   | 83.3                                                | 10000            | 6635             |
| Bergen County.....                                     | 109.3                                               | 10930            | 7870             |
| Burlington County.....                                 | 95.9                                                | 10000            | 6905             |
| Camden City.....                                       | 100.8                                               | 10080            | 7258             |
| Cumberland County.....                                 | 94.6                                                | 10000            | 6811             |
| Newark City.....                                       | 113.1                                               | 11310            | 8143             |
| Gloucester County.....                                 | 100.6                                               | 10060            | 7243             |
| Hudson County Consortium...                            | 108.0                                               | 10800            | 7776             |
| Trenton City.....                                      | 105.5                                               | 10550            | 7596             |
| Middlesex County.....                                  | 113.3                                               | 11330            | 8158             |
| Monmouth County.....                                   | 94.5                                                | 10000            | 6804             |
| Morris County.....                                     | 113.7                                               | 11370            | 8186             |
| Ocean County.....                                      | 82.0                                                | 10000            | 6635             |
| Paterson City.....                                     | 102.2                                               | 10220            | 7358             |
| Somerset County.....                                   | 115.6                                               | 11560            | 8323             |
| Elizabeth City.....                                    | 120.7                                               | 12000            | 8690             |
| Bal of Camden<br>County, Co.                           |                                                     |                  |                  |
| Less Camden City.....                                  | 100.8                                               | 10080            | 7258             |
| Bal of Essex County, Co.                               |                                                     |                  |                  |
| Less City of Newark.....                               | 113.1                                               | 11310            | 8143             |
| Bal of Mercer<br>County, Co. Less Trenton<br>City..... | 105.5                                               | 10550            | 7596             |
| Bal of Passaic County Co.                              |                                                     |                  |                  |
| Less Paterson City.....                                | 102.2                                               | 10220            | 7358             |
| Bal of Union County, Co.                               |                                                     |                  |                  |
| Less Elizabeth City.....                               | 120.7                                               | 12000            | 8690             |
| Balance of New Jersey....                              | 96.1                                                | 10000            | 6919             |
| <b>NEW MEXICO</b>                                      |                                                     |                  |                  |
| Albuquerque<br>Consortium                              |                                                     |                  |                  |
| (Bernalillo County).....                               | 90.7                                                | 10000            | 6635             |
| Balance of New Mexico.....                             | 87.3                                                | 10000            | 6635             |
| <b>NEW YORK</b>                                        |                                                     |                  |                  |
| Albany City.....                                       | 101.2                                               | 10120            | 7286             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                        | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|--------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Rhame County.....                                      | 97.5                                                | 10000            | 7020             |
| Chemung County.....                                    | 91.8                                                | 10000            | 6635             |
| Dutchess County.....                                   | 111.8                                               | 11180            | 8050             |
| Buffalo City.....                                      | 102.1                                               | 10210            | 7351             |
| Rochester City.....                                    | 117.8                                               | 11780            | 8482             |
| Nassau Consortium.....                                 | 101.7                                               | 10170            | 7322             |
| Niagara County.....                                    | 109.3                                               | 10930            | 7870             |
| Oneida County.....                                     | 91.1                                                | 10000            | 6635             |
| Syracuse City.....                                     | 103.4                                               | 10340            | 7445             |
| Orange County.....                                     | 87.4                                                | 10000            | 6635             |
| Oswego County.....                                     | 110.5                                               | 11050            | 7956             |
| Rehseleer County.....                                  | 88.4                                                | 10000            | 6635             |
| Rockland County.....                                   | 93.2                                                | 10000            | 6710             |
| St. Lawrence County.....                               | 100.1                                               | 10010            | 7207             |
| Saratoga County.....                                   | 94.5                                                | 10000            | 6804             |
| Schenectady County.....                                | 115.6                                               | 11560            | 8323             |
| Steuben County.....                                    | 109.3                                               | 10930            | 7870             |
| Suffolk Consortium<br>(Suffolk County).....            | 93.8                                                | 10000            | 6754             |
| Ulster County.....                                     | 93.3                                                | 10000            | 6718             |
| Yonkers City.....                                      | 110.8                                               | 11080            | 7978             |
| Bal of Albany County<br>Less Albany City.....          | 101.2                                               | 10120            | 7286             |
| Chautauqua Consortium....                              | 87.6                                                | 10000            | 6635             |
| Erie Consortium.....                                   | 102.1                                               | 10210            | 7351             |
| Bal of Monroe Co., Co.<br>Less Rochester City.....     | 117.8                                               | 11780            | 8482             |
| Hempstead Town-Long Beach<br>City Consortium.....      | 101.7                                               | 10170            | 7322             |
| New York City.....                                     | 120.7                                               | 12000            | 8690             |
| Bal of Onondaga County, Co.<br>Less Syracuse City..... | 103.4                                               | 10340            | 7445             |
| West Chester Consortium...                             | 109.7                                               | 10970            | 7898             |
| Balance of New York.....                               | 84.8                                                | 10000            | 6635             |
| <b>NORTH CAROLINA</b>                                  |                                                     |                  |                  |
| Alamance County.....                                   | 75.1                                                | 10000            | 6635             |
| Burcombe County.....                                   | 81.2                                                | 10000            | 6635             |
| Cumberland County.....                                 | 78.8                                                | 10000            | 6635             |
| Davidson County.....                                   | 75.1                                                | 10000            | 6635             |
| Durham City.....                                       | 97.7                                                | 10000            | 7034             |
| Winston Salem<br>Consortium<br>(Forsyth County).....   | 102.5                                               | 10250            | 7380             |
| Gaston County.....                                     | 81.3                                                | 10000            | 6635             |
| Greensboro<br>Consortium (Guilford<br>County).....     | 90.4                                                | 10000            | 6635             |
| Charlotte City.....                                    | 97.5                                                | 10000            | 7020             |
| Onslow County.....                                     | 71.1                                                | 10000            | 6635             |
| Robeson County.....                                    | 65.8                                                | 10000            | 6635             |
| Bal. of Wake County, Co.<br>Less City of Raleigh.....  | 86.4                                                | 10000            | 6635             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                           | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-----------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| Raleigh Consortium.....                                   | 79.7                                                | 10000            | 6635             |
| Balance of North<br>Carolina.....                         | 76.6                                                | 10000            | 6635             |
| NORTH DAKOTA                                              |                                                     |                  |                  |
| North Dakota State-<br>wide Consortium.....               | 83.7                                                | 10000            | 6635             |
| OHIO                                                      |                                                     |                  |                  |
| Allen County.....                                         | 104.4                                               | 10440            | 7517             |
| Ashtabula County.....                                     | 94.4                                                | 10000            | 6797             |
| Butler County.....                                        | 115.0                                               | 11500            | 8280             |
| Clark County.....                                         | 97.6                                                | 10000            | 7027             |
| Columbus Consortium<br>(Franklin Co.).....                | 102.1                                               | 10210            | 7351             |
| Greene County.....                                        | 91.7                                                | 10000            | 6635             |
| Cincinnati City.....                                      | 109.3                                               | 10930            | 7870             |
| Lake County.....                                          | 102.1                                               | 10210            | 7351             |
| Lorain County.....                                        | 117.3                                               | 11730            | 8446             |
| Dayton City.....                                          | 115.5                                               | 11550            | 8316             |
| Portage Co.....                                           | 91.6                                                | 10000            | 6635             |
| Scioto County.....                                        | 88.2                                                | 10000            | 6635             |
| Akron Consortium.....                                     | 107.9                                               | 10790            | 7769             |
| Canton Consortium.....                                    | 103.1                                               | 10310            | 7423             |
| Clermont/Warren<br>Consortium.....                        | 85.2                                                | 10000            | 6635             |
| Cleveland Consortium.....                                 | 115.5                                               | 11550            | 8316             |
| Bal of Hamilton, Co.<br>less Cincinnati City.....         | 109.3                                               | 10930            | 7870             |
| Licking/Del<br>Consortium.....                            | 95.8                                                | 10000            | 6898             |
| Montgomery-Preble<br>Consortium.....                      | 114.1                                               | 11410            | 8215             |
| North East Ohio<br>Manpower Consortium.....               | 109.4                                               | 10940            | 7877             |
| Richland/Morrow Csr.....                                  | 103.6                                               | 10360            | 7459             |
| Toledo Consortium.....                                    | 112.2                                               | 11220            | 8078             |
| Balance of Ohio.....                                      | 94.7                                                | 10000            | 6818             |
| OKLAHOMA                                                  |                                                     |                  |                  |
| Comanche County.....                                      | 75.9                                                | 10000            | 6635             |
| Bal of Cleveland Co.<br>less Oklahoma City<br>(Part)..... | 73.0                                                | 10000            | 6635             |
| Oklahoma City Consortium.....                             | 96.7                                                | 10000            | 6962             |
| Oklahoma County, Co. less<br>City of Oklahoma (Part)..... | 98.1                                                | 10000            | 7063             |
| Tulsa Consortium.....                                     | 103.6                                               | 10360            | 7459             |
| Balance of Oklahoma.....                                  | 82.3                                                | 10000            | 6635             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                             | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| OREGON                                                      |                                                     |                  |                  |
| Lane County.....                                            | 98.4                                                | 10000            | 7085             |
| Portland City.....                                          | 107.3                                               | 10730            | 7726             |
| Bal of Clackamas Co.<br>Less Portland City<br>(Part).....   | 98.8                                                | 10000            | 7114             |
| Jackson/Josephine<br>Csr.....                               | 93.8                                                | 10000            | 6754             |
| Mid Willamette Valley<br>Consortium.....                    | 93.0                                                | 10000            | 6696             |
| Multnomah/Washington<br>Consortium.....                     | 103.8                                               | 10380            | 7474             |
| Balance of Oregon.....                                      | 94.8                                                | 10000            | 6826             |
| PENNSYLVANIA                                                |                                                     |                  |                  |
| Pittsburgh City.....                                        | 112.9                                               | 11290            | 8129             |
| Beaver County.....                                          | 122.8                                               | 12000            | 8842             |
| Berks County.....                                           | 94.0                                                | 10000            | 6768             |
| Bucks County.....                                           | 97.7                                                | 10000            | 7034             |
| Centre County.....                                          | 87.9                                                | 10000            | 6635             |
| Chester County.....                                         | 103.0                                               | 10300            | 7416             |
| Delaware County.....                                        | 103.7                                               | 10370            | 7466             |
| Erie City.....                                              | 97.7                                                | 10000            | 7034             |
| Fayette County.....                                         | 87.3                                                | 10000            | 6635             |
| Franklin County.....                                        | 90.1                                                | 10000            | 6635             |
| Bal of Lackawanna<br>County, Co. Less<br>Scranton City..... | 81.7                                                | 10000            | 6635             |
| Scranton City.....                                          | 81.7                                                | 10000            | 6635             |
| Lawrence County.....                                        | 93.0                                                | 10000            | 6696             |
| Luzerne County.....                                         | 84.6                                                | 10000            | 6635             |
| Montgomery County.....                                      | 107.0                                               | 10700            | 7704             |
| Northumberland<br>County.....                               | 86.0                                                | 10000            | 6635             |
| Philadelphia City/<br>County.....                           | 109.1                                               | 10910            | 7855             |
| Washington County.....                                      | 107.4                                               | 10740            | 7733             |
| Westmoreland County.....                                    | 101.1                                               | 10110            | 7279             |
| York County.....                                            | 95.1                                                | 10000            | 6847             |
| Bal of Allegheny<br>County, Co.<br>Less Pittsburgh City.... | 112.9                                               | 11290            | 8129             |
| Balance of Erie County,<br>Co. Less Erie City.....          | 97.7                                                | 10000            | 7034             |
| Landaster Consortium.....                                   | 90.4                                                | 10000            | 6635             |
| Lehigh Valley Consortium.....                               | 101.7                                               | 10170            | 7322             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                            | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
|                                                            |                                                     | 10000            | 6635             |
| Lycoming Consortium.....                                   | 90.2                                                | 10000            | 7070             |
| Mercer Consortium                                          | 98.2                                                | 10000            | 6635             |
| Schuylkill Consortium.....                                 | 76.2                                                | 10000            |                  |
| Southern Allegany Con-<br>sortium.....                     | 93.1                                                | 10000            | 6703             |
| Susquehanna Consortium                                     | 98.3                                                | 10000            | 7078             |
| Tri-County Consortium<br>(Butler Consortium).....          | 103.5                                               | 10350            | 7452             |
| Balance of Pennsylvania.....                               | 86.5                                                | 10000            | 6635             |
| <br>RHODE ISLAND                                           |                                                     |                  |                  |
| Providence City.....                                       | 84.3                                                | 10000            | 6635             |
| Balance of Rhode Island.....                               | 82.0                                                | 10000            | 6635             |
| <br>SOUTH CAROLINA                                         |                                                     |                  |                  |
| Statewide Consortium.....                                  | 82.9                                                | 10000            | 6635             |
| <br>SOUTH DAKOTA                                           |                                                     |                  |                  |
| South Dakota Statewide<br>Consortium                       | 77.5                                                | 10000            | 6635             |
| <br>TENNESSEE                                              |                                                     |                  |                  |
| Nashville/Davidson County<br>(Davidson County).....        | 91.7                                                | 10000            | 6635             |
| Chattanooga City.....                                      | 97.9                                                | 10000            | 7049             |
| Bal. of Hamilton County, Co.<br>(less Chattanooga City)... | 97.9                                                | 10000            | 7049             |
| Knoxville Consortium (Knox<br>County).....                 | 85.5                                                | 10000            | 6635             |
| Memphis Consortium<br>(Shelby County).....                 | 94.9                                                | 10000            | 6833             |
| Sullivan County.....                                       | 100.8                                               | 10080            | 7258             |
| Balance of Tennessee.....                                  | 79.0                                                | 10000            | 6635             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                                                             | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-----------------------------------------------------------------------------|-----------------------------------------------------|------------------|------------------|
| TEXAS                                                                       |                                                     |                  |                  |
| Cameron County.....                                                         | 71.1                                                | 10000            | 6635             |
| Dallas City.....                                                            | 105.5                                               | 10550            | 7296             |
| El Paso Consortium<br>(El Paso County).....                                 | 79.3                                                | 10000            | 6635             |
| Galveston County                                                            | 106.0                                               | 10600            | 7632             |
| Houston City.....                                                           | 115.8                                               | 11580            | 8338             |
| Webb County.....                                                            | 68.0                                                | 10000            | 6635             |
| Alamo Consortium.....                                                       | 84.5                                                | 10000            | 6635             |
| Gulf Coast Area<br>Manpower Consortium.....                                 | 101.7                                               | 10170            | 7322             |
| Capital Area<br>Manpower Consortium                                         | 82.9                                                | 10000            | 6635             |
| Central Texas Manpower<br>Consortium.....                                   | 78.7                                                | 10000            | 6635             |
| Coastal Bend<br>Manpower Consortium.....                                    | 91.7                                                | 10000            | 6635             |
| Dallas County<br>Consortium.....                                            | 105.5                                               | 10550            | 7596             |
| Ft. Worth Consortium.....                                                   | 97.7                                                | 10000            | 7034             |
| Bal. of Harris Co., Less<br>Pasadena Csrt and<br>Houston City.....          | 115.8                                               | 11580            | 8338             |
| Hidalgo County<br>Consortium                                                | 68.3                                                | 10000            | 6635             |
| Greater Pasadena Consortium..                                               | 115.8                                               | 11580            | 8338             |
| North Texas State Planning<br>Regional Consortium.....                      | 80.1                                                | 10000            | 6635             |
| Permian Basin Consortium....                                                | 102.4                                               | 10240            | 7373             |
| Region XI Consortium.....                                                   | 78.4                                                | 10000            | 6635             |
| S.E. Texas Comprehensive<br>Manpower Consortium.....                        | 115.0                                               | 11500            | 8280             |
| Bal. of Tarrant Co.<br>Less Ft. Worth Csrt and<br>Grand Prairie (Part)..... | 97.7                                                | 10000            | 7034             |
| South Plains Association of<br>Governments.....                             | 80.4                                                | 10000            | 6635             |
| Texarkana Consortium<br>(Arkansas-Texas)                                    | 87.6                                                | 10000            | 6635             |
| Texas Panhandle Employment<br>and Training Alliance Con-<br>sortium.....    | 91.7                                                | 10000            | 6635             |
| West Central Texas Consortium.                                              | 78.3                                                | 10000            | 6635             |
| East Texas Manpower Consortium                                              | 86.0                                                | 10000            | 6635             |
| Balance of Texas                                                            | 80.6                                                | 10000            | 6635             |



## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                       | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|---------------------------------------|-----------------------------------------------------|------------------|------------------|
| UTAH                                  |                                                     |                  |                  |
| Utah Statewide Consortium.....        | 92.6                                                | 10000            | 6667             |
| VERMONT                               |                                                     |                  |                  |
| Vermont Statewide Consortium.....     | 82.7                                                | 10000            | 6635             |
| VIRGINIA                              |                                                     |                  |                  |
| Arlington County.....                 | 134.2                                               | 12000            | 9662             |
| Alexandria City.....                  | 100.3                                               | 10030            | 7222             |
| Fairfax-Loudoun Consortium.....       | 101.5                                               | 10150            | 7308             |
| Henrico County Consortium.....        | 94.1                                                | 10000            | 6775             |
| Penninsula Consortium.....            | 93.2                                                | 10000            | 6710             |
| Prince William County Consortium..... | 97.2                                                | 10000            | 6998             |
| Ramps Consortium.....                 | 95.5                                                | 10000            | 6876             |
| Roanoke Consortium.....               | 87.7                                                | 10000            | 6635             |
| Stama Consortium.....                 | 87.8                                                | 10000            | 6635             |
| Balance of Virginia.....              | 82.4                                                | 10000            | 6635             |
| WASHINGTON                            |                                                     |                  |                  |
| Clark County.....                     | 106.0                                               | 10600            | 7632             |
| Kitsap County.....                    | 117.0                                               | 11700            | 8424             |
| Bal of Pierce County, Co.             |                                                     |                  |                  |
| Less Tacoma City.....                 | 101.0                                               | 10100            | 7272             |
| Tacoma City.....                      | 101.0                                               | 10100            | 7272             |
| Spokane Csrt. (Spokane Cn.).....      | 96.9                                                | 10000            | 6977             |
| Yakima County.....                    | 88.9                                                | 10000            | 6635             |
| King/Snohomish Consortium.....        | 113.6                                               | 11360            | 8179             |
| Balance of Washington..               | 103.3                                               | 10330            | 7438             |
| WEST VIRGINIA                         |                                                     |                  |                  |
| West Virginia Statewide Consortium..  | 102.7                                               | 10270            | 7394             |
| WISCONSIN                             |                                                     |                  |                  |
| Madison/Dane Consortium (Dane Co.)..  | 95.7                                                | 10000            | 6890             |
| Marathon County.....                  | 94.9                                                | 10000            | 6833             |
| Milwaukee County.....                 | 107.7                                               | 10770            | 7754             |
| Outagamie County.....                 | 96.6                                                | 10000            | 6955             |
| Rock County.....                      | 102.0                                               | 10200            | 7344             |
| Northwest Wisconsin CEP.....          | 75.4                                                | 10000            | 6635             |

## 1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

|                                   | INDEX (NATIONAL<br>ANNUAL WAGES<br>11,425 = 100.00) | MAXIMUM<br>WAGES | AVERAGE<br>WAGES |
|-----------------------------------|-----------------------------------------------------|------------------|------------------|
| Trico CETAC.....                  | 100.0                                               | 10000            | 7200             |
| Winne/Fond Consortium..           | 95.4                                                | 10000            | 6869             |
| WOW Consortium.....               | 99.0                                                | 10000            | 7128             |
| Balance of Wisconsin....          | 83.9                                                | 10000            | 6635             |
| WYOMING                           |                                                     |                  |                  |
| Wyoming Statewide Consortium..... | 99.7                                                | 10000            | 7178             |
| PUERTO RICO                       |                                                     |                  |                  |
| Bayamon Municipio.....            | 64.5                                                | 10000            | 6635             |
| Caguas Municipio.....             | 64.5                                                | 10000            | 6635             |
| Carolina Municipio.....           | 64.5                                                | 10000            | 6635             |
| Mayaguez Municipio.....           | 64.5                                                | 10000            | 6635             |
| Ponce Municipio.....              | 64.5                                                | 10000            | 6635             |
| San Juan Consortium.....          | 64.5                                                | 10000            | 6635             |
| Balance of Puerto Rico.....       | 64.5                                                | 10000            | 6635             |



## NOTICES

Signed this 19th day of December  
1978 at Washington, D.C.

F. RAY MARSHALL,  
*Secretary of Labor.*

[FR Doc. 78-35884 Filed 12-28-78; 8:45 am]

FRIDAY, DECEMBER 29, 1978

## PART III



**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**Office of the Assistant  
Secretary for Community  
Planning and  
Development**

**URBAN HOMESTEADING  
PROGRAM**



[4210-01-M]

# Title 24—Housing and Urban Development

## CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

(Docket No. R-78-538)

### PART 590—URBAN HOMESTEADING PROGRAM

#### Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule sets forth Urban Homestead program requirements for HUD, local grants, and local government agencies with regard to applications, transfers of Secretary-owned properties, property disposition assistance, HUD program evaluation, performance review and other applicable laws and regulations.

EFFECTIVE DATE: January 29, 1979.  
FOR FURTHER INFORMATION CONTACT:

Hugh Allen, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, Tel. (202) 755-6330.

SUPPLEMENTARY INFORMATION: On May 31, 1978, (43 FR 23692) proposed regulations were published in the FEDERAL REGISTER for public comment. Interested parties were given until July 1, 1978, to submit written comments. All comments received with respect to the proposed rules were given consideration. As a result, of comments, the following clarifications were made:

#### LOCAL URBAN HOMESTEADING AGENCY

There were a number of comments stating that the definition of "Local Urban Homesteading Agency" in paragraph 590.5(e) should be expanded to include private non-profit organizations as eligible administering agencies if designated by a unit of general local government or State.

Section 810 of the Housing and Community Development Act of 1974, as amended, clearly states that only a State, a unit of general local government or the designated public agency of a State or unit of general local government may receive title, to HUD's unoccupied single-family houses and carry out a HUD approved urban homesteading program. A local urban

homesteading agency, however, may enter into agreements with private non-profit organizations, neighborhood-based nonprofit organizations, small business investment companies and/or local development corporations to provide program related services (e.g., counseling services to homesteaders, neighborhood improvements, financial assistance, repair work). A new paragraph is added at 590.3(h) which defines "private non-profit entity, neighborhood-based nonprofit organization, Small Business Investment Company and local development corporation."

#### URBAN HOMESTEADING NEIGHBORHOOD

A number of comments stated that paragraph 590.7(a) was unclear as to whether a CDBG entitlement recipient could designate an urban homesteading neighborhood outside of a Neighborhood Strategy Area (NSA).

The Department encourages communities to make urban homesteading an integral part of local Community Development Programs. Use of Neighborhood Strategy Areas (NSA's) as defined by CDBG regulations published March 1, 1978,

Paragraph 570.301(c), to qualify areas as Homesteading areas is intended to facilitate that result. Selection of Homesteading areas is not limited to pre-existing NSA's. The Department encourages selecting an area appropriate to homesteading and then simultaneously applying to designate the area as an NSA if it needs the kind of treatment appropriate to an NSA. HUD does permit, however, the designation of areas which are not NSA's in Paragraph 590.7 (a)(2)(i)-(iii) if:

- (1) the applicant is not a recipient of Community Development Block Grant (CDBG) entitlement funds; or
- (2) the required public improvements and services will be provided from sources other than CDBG funds; or
- (3) the neighborhood selected does not require the concentrated treatment appropriate to an NSA.

Localities in their selection of urban homesteading neighborhoods should, however, take into consideration the availability and suitability of housing stock.

#### LOCALLY OWNED PROPERTIES

The policy of the Department is to encourage the use of locally-owned property in HUD approved urban homesteading programs. We have added language in paragraph 590.7(a) regarding the designation of urban homesteading neighborhoods to emphasize this policy. Urban Homesteading neighborhoods must have Secretary-owned property or Secretary-owned property and locally-owned property. A locality's program may be

approved with only locally-owned property if the designated urban homesteading neighborhood is an area where eligible community development block grant activities are being carried out.

#### SCATTERED SITE HOMESTEADING

A number of comments recommended that the regulations should permit scattered-site or city-wide homesteading. Section 810 of the Housing and Community Development Act of 1974, states that an urban homesteading program approved by HUD must provide for a coordinated approach toward neighborhood improvement. Paragraph 590.7(b)(6) of the regulations reflects this legislative requirement for a neighborhood focus and consequent prohibits scattered site homesteading.

#### PRIORITY FOR CERTAIN INCOME GROUPS

There were several comments that suggested that the Urban Homesteading Program should give priority to low- or moderate-income individuals or families. The Section 810 legislation and the program regulations require that the applicant have an equitable procedure for selecting homesteaders and set two basic criteria to consider in the selection of homesteaders:

- (1) the recipient's need for housing, and;
- (2) the recipient's capacity to make or cause to be made the repairs and improvements required.

We interpret the legislation to direct a balanced consideration of both need and financial capacity to improve homestead property. HUD has, therefore, chosen not to provide guidelines on determining "need" and not to set an income maximum. Determination of need and the setting of income limits are matters that will be left to the localities since they are the most familiar with their housing markets and the needs in their neighborhoods. HUD does require in Section 590.11(b)(3)(ii) that an applicant certify that it has equitable procedures for the selection of homesteaders.

Early results from the evaluation of the Urban Homesteading Demonstration Program indicate that low- to moderate-income families are being served. The average income for homesteading families in the Demonstration is just over \$12,500.

#### TRANSFER WITHOUT SUBSTANTIAL CONSIDERATION

There were some comments which stated that the regulations should not prohibit a substantial payment for non-Secretary-owned properties transferred to homesteaders. It was pointed out that local statutes or regulations may require payment of nominal fees

or a negotiated price for locally-owned properties under a local program.

Upon consideration of these comments, the regulations have been revised and the transfer of properties without substantial consideration now applies only to those properties that are Secretary-owned and conveyed to localities under the provisions of Section 810. We expect, however, that whenever possible, localities will apply similar procedures to homesteading locally acquired properties and properties acquired from HUD.

#### FEE SIMPLE TITLE

Concern was expressed by some comments that conveyance of fee simple title to homestead property after the three-year occupancy period could allow the homesteaders to sell the property and make a windfall profit. The Section 810 legislation clearly states that once the homesteader has complied with the terms of the homesteading agreement, he is to receive fee simple title to the property. Paragraph 590.7(b)(5) of the regulation contains this requirement. The homesteader takes a risk when he agrees to live in and repair a vacant unrepaid property and some possibility of capital gain is a reasonable incentive to attract people to the program.

#### REVOCATION PROCEDURES

Some comments were received which indicated that the regulations should be more detailed in the requirement of revocation in paragraph 590.7(b)(4). The proposed regulations provide for revocation of the conditional conveyance upon "any material breach" of the homesteader agreement. This requirement is directly from the Section 810 legislation. States and units, of general local government can, however, be more specific in defining procedures for revocation so long as such procedures are consistent with the statute and regulations.

Some comments recommended that the regulations provide that hearings be held to settle disputes between the local urban homesteading agency and homesteaders or potential homesteaders. The applicant can include procedures for holding hearings as a matter of local discretion.

Some comments suggested that the regulations provide for compensation to a homesteader who due to circumstances beyond his control must give up his homesteading property before the 3-year occupancy period for repairs that he has made. The State or unit of general local government may in its discretion provide compensation for homesteading under such circumstances.

#### INSPECTIONS OF HOMESTEAD PROPERTIES

A comment was received which requested that Section 590.7(b)(3)(iv), local urban homesteading agency, that this section should be revised to permit "designated agents" of the local urban homesteading agency as well as employees of the agency to conduct inspections.

Section 590.7(b)(3)(iv) has been revised to reflect this change.

#### OCCUPANCY PERIOD

There was some question about the period of occupancy required of the homesteader as stated in the proposed regulations.

We have revised the language in Section 590.7(b)(3)(iii) so that the occupancy requirement is clear and that the three-year period begins with the first day of occupancy.

#### CONVEYANCE OF UNREPAIRED PROPERTY

There were some comments expressing concern that only "unrepaired" properties could be eligible for homesteading.

The Section 810 legislation clearly intends that properties eligible for urban homesteading be in need of repairs. HUD, however, could transfer under Section 810 partially repaired properties or properties that have been repaired and later vandalized and require further repairs. On the other hand, properties for which repair contracts are outstanding may not be transferred.

#### REHABILITATION REQUIREMENTS

Some comments requested specific criteria regarding repair standards for homestead properties.

The Section 810 legislation states that the homesteader must agree to:

- (1) make repairs required to meet minimum health and safety standards for occupancy prior to occupying the property and then;
- (2) makes such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within eighteen months after occupying the property.

Localities have different local code standards. However, it is expected that urban homesteading programs will be in compliance with all local and State laws. It would not be reasonable or possible for HUD to define in the regulations specific requirements for occupancy and for local code standards.

Another comment received stated that the 18-month period for completing repair work is too short and that the regulations leave no leeway for an extension of the 18-month period due to circumstances beyond the control of the homesteader.

The statute is clear and requires that all repairs bringing the property up to local code standards of decent, safe and sanitary housing be completed within 18 months after initially occupying the property.

#### COUNSELING

Some comments stated that a counseling program should be required for all participants in the urban homesteading program.

States or units of general local government are encouraged to have counseling programs, but HUD will not require such programs by regulation.

#### LISTING OF SECRETARY-OWNED PROPERTIES

Some comments received expressed concern that the list of HUD properties that the HUD Area Office is to provide might be out of date. We have included the word "current" before list in Section 590.9(b).

Another comment expressed concern that there was nothing in the regulations for the provision of an accurate and up-to-date property listing on a periodic basis for an urban homesteading program. In Section 590.17(a)(2) (i) and (ii), the regulations provide for the HUD Area Office to notify the local urban homesteading agency of new single-family acquisitions by HUD in the urban homesteading neighborhood.

#### APPLICATION REQUIREMENTS

Some comments suggested that the regulations should permit the application to be submitted as a part of their CDBG application.

HUD has chosen to have a separate application for homesteading that can be submitted at any time. Part of the requirements for submitting a homesteading application, however, can be satisfied by cross referencing the CDBG application as stated in Paragraph 590.11(a)(2).

#### STATE AND AREAWIDE CLEARINGHOUSE REVIEW (A-95)

Several comments stated that the proposed 60-day advance for the A-95 review would cause an unnecessary and excessive delay in the application review. Paragraphs 590.11(c)(1)-(2) have been revised to permit communities to submit completed applications to appropriate State and areawide clearinghouses prior to or concurrently with the submission of the application to HUD. A new paragraph 590.11(c)(2) states that clearinghouses will have thirty (30) days to review the completed application and transmit to the applicant and to the appropriate HUD Area Office any comments or recommendations. An additional paragraph 590.11(c)(5) prohibits HUD



from approving an application until all comments have been received and considered from the clearinghouses or until the end of the 30-day review period, whichever comes first.

#### TRANSFER OF SECRETARY-OWNED PROPERTIES IDENTIFIED IN APPLICATION

Some comments expressed objection to 590.13 which states that application approval does not obligate HUD to transfer a specific number or particular properties identified in the application. This language is being retained because the Secretary-owned properties that are available at the time an application is prepared and submitted to HUD may be disposed of before the application is approved. Furthermore, any Secretary-owned properties identified in an application must be determined suitable for transfer in accordance with Section 590.17(b) after the proposed local urban homesteading program is approved by HUD.

#### TIME LIMIT ON NOTIFYING HUD ABOUT USE OF AVAILABLE PROPERTY

Several comments requested more time in which to inform HUD about the use of property because of requirements of local laws. Paragraph 590.17(a)(2)(ii) is revised to permit the HUD Area Office Manager to extend the 30-day limitation for notifying HUD about the use of potentially available property if this time limitation is unworkable for a community's selection process. The Area Office Manager may also extend the 30-day limit in 590.17(c)(1) for transferring property title to a homesteading agency if the Area Manager determines that the requirement is impractical for the local urban homesteading agency.

#### FAIR MARKET VALUE LIMIT

Several comments indicated that the "as is condition" fair market value limit of \$15,000 set forth in Paragraph 590.17(b)(5)(i) for eligible Secretary-owned property suitable for transfer is too low in some market areas. This paragraph has been retained because an Area Office Manager is given the authority in paragraph 590.17(b)(5)(iii)(A) to waive this limitation if the benefits to the community will be sufficient to justify the waiver.

#### PROPERTY TRANSFER TO NEIGHBORHOOD NONPROFIT ORGANIZATIONS

Numerous comments expressed objections to the proposed language in paragraph 590.17(c)(3) that would permit an Area Office to transfer a Secretary-owned property that is eligible for use in a local homesteading program to a non-profit organization without receiving concurrence from the local government or urban home-

steading agency. This paragraph is revised to require that a HUD Area Office obtain local concurrence before such a property is made available for acquisition by non-profit organizations.

#### IMPLEMENTING FUNDS

There were comments that asked for clarification of Section 590.19 regarding the reservation of Section 810 funds for acquiring Secretary-owned property and Section 312 rehabilitation loan funds. HUD will administratively earmark Section 810 and Section 312 funds to implement approved local urban homesteading programs.

#### RELOCATION ASSISTANCE

Some comments expressed confusion regarding the application of relocation assistance to the Urban Homesteading Program in paragraph 590.29(e). If a local urban homesteading agency acquires occupied real property for use in an approved urban homesteading program, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies. When a local homesteading agency obtains title as a result of a default foreclosure or breach of the Urban Homesteading Agreement stated in paragraph 590.7(b)(3), the transfer of title back to the agency is not considered to be an "acquisition" as defined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The occupant is, therefore, not eligible for relocation assistance.

#### OTHER INFORMATION

A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1.

Copies of the Finding are available for inspection and copying during business hours in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, an amendment to 24 CFR is promulgated by adding a new Part 590. The Table of Contents to Part 590 is renumbered to read as follows:

#### PART 590—URBAN HOMESTEADING

- Sec. 590.1 Scope of regulation.
- 590.3 Purpose of program.
- 590.5 Definitions.
- 590.7 Program requirements.
- 590.9 Listing of Secretary-Owned Properties.
- 590.11 Applications.
- 590.13 HUD Review and Approval of Application.
- 590.15 Urban Homesteading Agreement.
- 590.17 Transfer of Secretary-Owned Properties.
- 590.19 Implementing Funds.

- Sec. 590.21 Reduction of Funds.
- 590.23 Program Close Out. (Reserved)
- 590.25 Retention of Records.
- 590.27 Audit.
- 590.29 Applicable Federal Laws and Regulations.
- 590.31 HUD Review of Local Urban Homesteading Agency's Performance.
- 590.33 Corrective and Remedial Action.
- 590.35 Evaluation by HUD.

AUTHORITY: Sec. 810, Pub. L. 93-383 as amended, 88 Stat. 734 (12 U.S.C. 1706e).

#### § 590.1 Scope of regulation.

(a) The policies and procedures in this regulation are applicable to the approval of urban homesteading programs authorized by Section 810 of the Housing and Community Development Act of 1974, as amended.

(b) This part includes the functions and responsibilities of HUD and units of general local government and States or a designated public agency of a State or unit of general local government with regard to program requirements; application requirements; submission of applications; review and approval of applications; transfer of Secretary-owned properties; property disposition assistance; HUD program evaluation; performance review, and other applicable Federal laws and regulations.

#### § 590.3 Purpose of program.

The purpose of the urban homesteading program is to utilize existing housing stock to provide homeownership, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program will provide for the transfer without payment to States or units of general local government or their designated public agencies Secretary-owned, unoccupied one- to four-family residences requested by such unit, State or agency for use in an approved urban homesteading program. Reservations under the Section 312 Rehabilitation Loan Program are available to finance rehabilitation of single family or multifamily homestead properties, as well as other properties, within the urban homesteading neighborhoods.

#### § 590.5 Definitions.

- (a) "Act" means Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended.
- (b) "Applicant" means any State or unit of general local government that applies to carry out an urban homesteading program under these regulations.
- (c) "Homesteader" means an individual or family who participates in a local urban homesteading program by accepting a property pursuant to the requirements of § 590.7. For locally owned property, it may also mean co-

operatives and condominium associations.

(d) "Locally-owned property" means any real property which is improved with a one- to four-family residence or a multifamily residence not obtained from the Department of Housing and Urban Development and to which the local urban homesteading agency holds title.

(e) "Local Urban Homesteading Agency" means a State, a unit of general local government, or a public agency designated by a unit of general local government or a State, which must have the authority to accept the transfer, without payment, of Secretary-owned property.

(f) "Local Urban Homesteading Program" means the operating procedures, and requirements developed by a local urban homesteading agency in accordance with the provisions of § 590.7.

(g) "Neighborhood Strategy Area (NSA)" means an area selected by a recipient of Community Development Block Grant (CDBG) entitlement funds and designated in its Community Development and Housing Plan for a program of concentrated community development activities which is defined by the Community Development Block Grant Regulations, Title 24, Chapter V, Part 570, Subpart D, Section 570.301(c).

(h) Private non-profit entity, neighborhood-based nonprofit organization, Small Business Investment Company and local development corporation mean:

(i) A private nonprofit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis;

(ii) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to this Part. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted under this Part are to be carried out;

(iii) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(iv) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business In-

vestment Act of 1958 (15 U.S.C. 696), a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695), or other similar entity incorporated pursuant to Federal State, or local law.

(i) "Secretary" means the Secretary of Housing and Urban Development or any person to whom the Secretary has delegated authority for the urban homesteading program.

(j) "Secretary-owned property" means any real property:

(1) Which is improved with a one- to four-family residence;

(2) To which the Secretary holds Title;

(3) Which is not occupied.

(k) "Section 312 Rehabilitation Loan Funds" means loan funds authorized by Section 312 of the Housing Act of 1964, as amended to finance the rehabilitation of urban homesteaded property, as well as other property within the designated urban homesteading neighborhood.

(l) "Section 810 Funds" means the funds authorized under Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended to reimburse the Department of Housing and Urban Development's housing loan and mortgage insurance funds for the fair market value of Secretary-owned properties transferred to local urban homesteading agencies.

(m) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(n) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, and American Samoa, or in a general purpose political subdivision thereof: The District of Columbia; the Trust Territories of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

(o) "Unoccupied residential property" means either a Secretary-owned property or a locally-owned property that is vacant.

(p) "Urban homesteading neighborhood" means a geographic area(s) approved by HUD for conducting a local urban homesteading program that meets the requirements of § 590.7.

#### § 590.7 Program requirements.

An applicant shall meet the following requirements to qualify for assistance under this Part:

(a) *Designation of Urban Homesteading Neighborhood.* It shall designate neighborhood(s) for carrying out urban homesteading. An urban home-

steading neighborhood shall have 1) available Secretary-owned properties; 2) Secretary-owned plus locally-owned properties; or 3) pursuant to Section 312(a)(1)(D) of the Housing Act of 1964, as amended, and Title I of the Housing Community Development Act of 1974, a amended, locally-owned properties within designated areas where eligible community development block grant activities are being carried out. An urban homesteading neighborhood shall be in the following areas:

(1) The same as or contained within Neighborhood Strategy Areas designated pursuant to the Community Development Block Grant regulations published March 1, 1978, in the Code of Federal Regulations, Title 24, Chapter V, Part 570, Subpart D—Entitlement Grants, § 570.301(c); or

(2) Another area designated by the applicant, if:

(i) The applicant is not a recipient of community development block grant entitlement funds authorized by Title I of the Housing and Community Development Act of 1974;

(ii) The required public improvements and services will be provided from sources other than community development block grants; or

(iii) The neighborhood selected for urban homesteading requires some improvements but not the concentrated treatment required for a Neighborhood Strategy Area.

(b) *Development of Local Urban Homesteading Program.* It shall develop a program to convey unoccupied residential properties to qualified individuals or families. The program shall provide for the following:

(1) *Homesteader Selection.* It shall provide equitable procedures for homesteader selection giving special consideration to the homesteader's:

(i) Need for housing; and

(ii) Capacity to make or cause to be made necessary repairs and improvements.

(2) *Conditional conveyance.* It shall provide for the conditional conveyance of unoccupied, unrepaid residential property to homesteaders. Property received from the Secretary-owned inventory shall be conditionally conveyed without substantial consideration.

(3) *Homesteader Agreement.* It shall provide for execution of a Homesteader Agreement between the local urban homesteading agency and the homesteader which shall require the homesteader:

(i) To make or cause to be made any repairs required to meet minimum local health and safety housing standards prior to occupying the property;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local



standards for decent, safe, and sanitary housing within 18 months after occupying the property and to comply with any energy conservation measures designated by the local urban homesteading agency as part of the repairs;

(iii) To occupy the property as principal residence for not less than three consecutive years from the initial date of occupancy;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the local urban homesteading agency; and

(4) *Revocation Upon Breach of Agreement.* It shall provide for the revocation of the conditional conveyance upon any material breach of the agreement by the homesteader.

(5) *Fee Simple Title.* It shall provide for the conveyance of the property from the local urban homesteading agency to the homesteader in fee simple title upon full compliance with the terms of the agreement between the local urban homesteading agency and the homesteader.

(6) *Coordinated Approach Toward Neighborhood Improvements.* It shall provide a plan for needed public improvements and services, and community facilities in the Urban Homesteading Neighborhoods.

(i) If the Urban Homesteading Neighborhood is a Neighborhood Strategy Area, then the coordinated approach toward neighborhood improvement for the area described in the applicant's Community Development Block Grant entitlement application, pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) will satisfy this requirement. Such an applicant will cite the appropriate cross reference in its applications.

(ii) For designated urban homesteading neighborhoods that are outside or mostly outside of Community Development Block Grant Neighborhood Strategy Areas of entitlement recipients, the coordinated approach toward neighborhood improvement plan shall include:

(A) A brief description of the area's need for revitalization, community facilities, public services and improvements and housing problems;

(B) A description of the plan that will be implemented to meet the identified needs for upgrading and improving the area; and

(C) A description of the actions to mitigate any adverse effects on low- and moderate-income persons that may result from implementing an urban homesteading program in the designated neighborhood.

#### § 590.9 Listing of Secretary-owned properties.

(a) To facilitate the local planning and program development in accordance with the program requirements of § 590.7 a potential applicant may submit a written request to the Manager of the appropriate HUD field office for a listing of all Secretary-owned properties defined in § 590.5(j) within the applicant's jurisdiction.

(b) After receipt of such request HUD shall provide to the potential applicant a current list of those Secretary-owned properties for which repair or sale contracts have not been executed.

#### § 590.11 Applications.

(a) *Submission Requirements.* Applications shall be submitted to the HUD Area Office which has jurisdiction over the applicant and shall consist of the following:

(1) Standard Form 424, prescribed by OMB Circular No. A-102;

(2) A description of the coordinated approach toward neighborhood improvement as required by § 590.7(b)(6). An applicant that is applying for Community Development Block Grant (CDBG) entitlement funds may cite the appropriate cross-reference in its community development plan pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) to meet this requirement.

(3) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown. The map shall include:

(i) An estimate of the number and the location of any locally-owned properties to be conveyed to homesteaders during the program's first year;

(ii) An estimate of the number and the location of any Secretary-owned properties requested for use in the proposed urban homesteading program during the program's first year;

(4) A description of the rehabilitation financing plan to be used in the urban homesteading neighborhood(s) which shall include:

(i) An estimate and brief description of terms and conditions of the Federal, State and/or local public funds and any private funding sources that are to be made available for interim and permanent financing of rehabilitation;

(ii) The total number of residential properties for rehabilitation (both homestead properties and other properties);

(iii) An outline of the applicant's proposed schedule(s) and time periods for committing rehabilitation loan funds in its urban homesteading program.

(5) An implementation plan which includes:

(i) The description of the public entity that will carry out the program, including any agreements with private non-profit organizations, neighborhood-based nonprofit organizations, small business investment companies and/or local development corporations, as defined in Section 590.5(h) to provide program related services (e.g. "counseling" services to homesteaders, marketing activities, neighborhood improvements, financial assistance, rehabilitation).

(ii) A timetable and methods to accomplish the program which includes:

(A) Transferring properties from HUD to the local urban homesteading agency;

(B) Advertising residential properties for homesteading purposes;

(C) Conveying unoccupied, unrepaid residential property to homesteaders; and

(D) A summary of the plan for implementing neighborhood improvements in accordance with § 590.7(b)(6)(i)-(ii).

(b) *Certifications.* The applicant shall submit certifications in such form as HUD may prescribe, providing assurances that:

(1) Its governing body has duly adopted or passed as an official act, resolution, motion, or similar action authorizing the filing of the application including all understandings and assurances contained in the application;

(2) It possesses the legal authority to:

(i) Accept the transfer without payment of Secretary-owned property;

(ii) Convey residential property received from HUD to homesteaders without any substantial consideration, and

(iii) Assist in or undertake the financing of the rehabilitation for residential property conveyed to homesteaders.

(3) It has:

(i) A form for conditional conveyance as required by § 590.7(b)(2);

(ii) Equitable procedures for selecting homesteaders as required by § 590.7(b)(1); and

(iii) An urban homesteader agreement required by § 590.7(b)(3).

(4) It will convey the residential property received from HUD in fee simple title without consideration to the homesteader upon full compliance with the terms of the agreement required in § 590.7(b)(3).

(5) It has, prior to submission of its application:

(i) Provided citizens an adequate opportunity to express preferences about the proposed location of urban homesteading neighborhoods; and

(ii) Provided citizens with adequate information regarding the amount of rehabilitation loan funds, and the

number of any Secretary-owned properties and/or locally-owned properties to be homesteaded and the coordinated approach toward neighborhood improvement required by § 590.7(b)(6).

(6) It will submit any environmental information that may be requested by HUD in meeting the Department's environmental responsibilities under the National Environmental Policy Act of 1969.

(7) It will: (i) Not discriminate upon the basis of race, creed, color, handicap, sex, or national origin in the sale, lease, or rental or in the use or occupancy of the property conveyed in accordance with this Part;

(ii) Comply with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968; and

(iii) Comply with Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against the handicapped in any program or activity receiving Federal financial assistance.

(8) It will comply with the lead based paint procedures set forth in 24 CFR Part 35 agreeing to:

(i) Assure the elimination of the lead based paint hazards for which HUD will not expend funds in residential structures transferred under this Part; and

(ii) Make notification to potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed prior to 1950.

(9) It will submit any information that may be requested by HUD meeting the Department's Responsibilities under the National Historic Preservation Act of 1966 (Pub. L. 89-665) and the Preservation of Historic and Archaeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(10) It will, upon conveyance of title from HUD assume liability for injury and damage to persons or property by reason of a defect in the dwelling, its equipment, its appurtenances, or any other reason.

(11) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the urban homesteading program.

(12) It will maintain in writing and on file a description of its approved local urban homesteading program for the purposes of public information and review.

(c) OMB Circular A-95, Part II.

(1) The applicant shall submit the completed application to all appropriate State and areawide clearinghouses

prior to, or concurrently with, the submission of the application to HUD.

(2) The clearinghouses shall have thirty (30) days to review the completed application and transmit to the applicant and to the appropriate HUD Area Office any comments or recommendations.

(3) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the impact of the proposal in revitalizing the designated urban homesteading neighborhood, the relationships of the proposal to community and areawide planning and any other considerations not reflected in the application which would bear on the viability of the proposal as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, Item 5, with emphasis on consistency among State, areawide, and local plans and compliance with environmental and civil rights laws.

(4) If the A-95 review comments contain any findings of inconsistency with State, areawide, or local plans or non-compliance with environmental or civil rights laws, the applicant must state how it proposes to resolve the finding or state its justification for proposing to proceed with the project despite the findings developed through the A-95 review process.

(5) HUD will not approve an application until all comments have been received and considered from the clearinghouses or until the end of the thirty-day review period, whichever occurs first.

(6) HUD shall notify the clearinghouses of actions taken on all applications reviewed within seven working days by use of Standard Form 424. When HUD makes approval following clearinghouse recommendations against approval or approval only with specific and major substantive changes, the clearinghouse will be provided an explanation for such approval with the HUD submittal of SF 424.

(d) *Application Submission.* Applications shall be submitted, at anytime, to the HUD Area Office which has jurisdiction over the applicant.

#### § 590.13 HUD review and approval of application.

The appropriate HUD Area Office will review the application and will approve the proposed local urban homesteading program, unless the HUD Area Office determines that it does not comply with the requirements of this Part and other applicable laws and regulations. Approval of the application does not, however, obligate HUD to transfer a specific number of properties or particular properties identified in the application. If the application is disapproved, the applicant

shall be informed in writing of the specific reasons for the disapproval.

#### § 590.15 Urban homesteading agreement.

(a) Upon approval of the proposed local urban homesteading program, the appropriate HUD Area Office will sign an Urban Homesteading Agreement with the local urban homesteading agency. The regulations of this part become a part of the agreement.

(b) The agreement is renewable on an annual basis: *Provided, That:*

(1) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(2) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner including the selection of homesteaders, the conveyance of residential property to homesteaders, the implementation of its interim and permanent financing plan(s), the completion and quality of the housing rehabilitation and the implementation of its coordinated approach toward neighborhood improvements.

#### § 590.17 Transfer of Secretary-owned property.

(a) *Property Disposition Assistance.* HUD's property disposition activity shall support the Urban Homesteading Program as follows:

(1) Upon the signing of the Urban Homesteading Agreement as required in § 590.15 but prior to the initial selection of any Secretary-owned property, a local urban homesteading agency may request HUD to suspend its routine property disposition activity for up to 45 days in the designated urban homesteading neighborhood(s). Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all Secretary-owned properties except those for which there are repair or sales contracts.

(2) The HUD Area Offices shall develop and implement a property disposition plan for Secretary-owned properties in the designated urban homesteading neighborhood which is consistent with the local urban homesteading program. This plan shall include the following procedure:

(i) As soon as feasible, but in any event not later than ten days, after receipt of notice of property transfer and application for insurance benefits to HUD for an unoccupied, one- to four-family residence in an approved urban homesteading neighborhood, the HUD Area Office shall notify the local urban homesteading agency of the potential availability of the property for homesteading. The notification shall be in writing and shall include the street address and zip code and shall inform the local urban



homesteading agency that it has thirty days from the date of the notice to inform the Area Office if it wishes to use the property for homesteading.

(ii) The Area Office shall not approve a property disposition program for that property until the local urban homesteading agency has informed that Area Office, in writing, whether or not it intends to use the property in the urban homesteading program or until 30 days have expired from the date of HUD's notice to such agency, whichever comes first. The Area Office Manager may extend the thirty (30) day deadline, if the Area Office Manager makes a determination that notification by the local urban homesteading agency within thirty (30) days is impractical. The title for any property requested in accordance with this procedure shall be transferred to a local urban homesteading agency if such property meets the conditions for transferring Secretary-owned properties listed in § 590.17(b).

(b) *Conditions for Transferring Secretary-Owned Properties.* Except as provided in § 590.17(c) below, HUD shall transfer the title of Secretary-owned properties to a local urban homesteading agency, without receiving payment from such agency, if the following conditions are met:

- (1) The local urban homesteading program has been approved by HUD;
- (2) The properties requested by the local urban homesteading agency are in a designated urban homesteading neighborhood(s);
- (3) The HUD Area Office has reserved the necessary Section 810 funds to reimburse HUD's housing loan and mortgage insurance accounts for the residential property to be transferred;
- (4) The requested property is unoccupied, unrepaid and a repair or sale contract has not been signed;
- (5) The requested property is determined to be suitable for the approved local urban homesteading program by the Area Office. In making this determination the Area Office will take into account the following factors:

(i) The value of the property. The value of the property shall not exceed \$15,000 for a one unit single family residence or an additional \$5,000 for each unit of two- to four-family residences. To compute this value, HUD shall estimate and deduct from the appraised as is fair market value of the property the cost of continued care and handling for the average length of time for that area that such property might remain in HUD's inventory if it were not transferred to a local urban homesteading agency;

(ii) The estimated cost of housing repairs required. The cost of required repairs shall not exceed \$27,000 per unit;

(iii) The Area Office Manager may authorize on a property by property or

program by program basis the transfer of Secretary-owned property;

(A) Whose value exceeds the limitations, cited in paragraph (b)(5)(i) of this section, if the benefit to the community, expected from the expedited occupancy of the property and the reduction of difficulties and delays (such as vandalism to property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal Government;

(B) For which the value of housing repairs exceeds the limitation, cited in paragraph (b)(5)(ii) of this section, when the value of such repairs in excess of \$27,000 per unit will be provided by the homesteader or through other local resources other than Section 312 rehabilitation loan funds.

(c) *Exceptions.* (1) If a local urban homesteading agency fails to accept title within thirty (30) days of the agency's selection of a Secretary-owned property made available in accordance with § 590.17(b)(1)-(5), the Area Office may approve an alternative disposition plan for the property. The Area Office Manager may extend, for a reasonable period of time, this thirty (30) day deadline if the Area Office Manager makes a determination that acceptance of title by the local urban homesteading agency within thirty (30) days of property selection is impractical.

(2) A property otherwise eligible for transfer to a local urban homesteading agency may be used to meet higher priority needs if the Area Office Manager makes a determination in writing that such property is essential to meet an existing legal obligation such as the following:

- (i) Settlement of Sales Warranty claims;
- (ii) Settlement of section 518 claims for critical structural defects in one- to four-family dwellings with certain mortgages insured by HUD;
- (iii) Emergency housing needs: (disaster housing and urgent public housing needs);
- (iv) Reconveyance for noncompliance with regulation 24 CFR Sec. 203.363;
- (v) Reconveyance pursuant to Civil Frauds Act settlement; and
- (vi) Reconveyance where the mortgage was never insured.

(3) A property otherwise eligible for transfer to a local urban homesteading agency for use in its HUD approved homesteading program, may instead be made available to private non-profit organization, a local development corporation or a neighborhood nonprofit organization as defined in Section 590.5(h) if the Area Office Manager determines in writing that such transfer will serve the community's best interest and is consistent with the goals

of the local urban homesteading program. Such transfer does require concurrence of the local urban homesteading agency or the local government.

#### § 590.19 Implementing Funds.

HUD will reserve or otherwise provide available Section 810 funds and Section 312 rehabilitation loan funds necessary to assist in implementing an approved local urban homesteading program. The Section 810 funds may not be used to reimburse local homesteading agencies for administrative costs nor may they be used to acquire property other than Secretary-owned property.

#### § 590.21 Reduction of Funds.

The Secretary reserves the right to reduce any Section 810 Secretary-owned property acquisition allocation or Section 312 rehabilitation loan funds earmarked, reserved or targeted for a local urban homesteading agency should such agency not meet the schedules for use of such funds required in §§ 590.11(a)(4)(iii) and 590.11(a)(5)(ii) (A) and (C), and does not comply with the statutory and regulatory requirements of this part or fails to carry out its program as approved.

#### § 590.23 Program Close Out (Reserved)

#### § 590.25 Retention of Records.

Financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the urban homesteading program shall be retained by the local urban homesteading agency for a period of three years from the date of the program closeout.

#### § 590.27 Audit.

The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of local urban homesteading agencies pertaining to funding assistance related to this part and Secretary-owned property transferred under this part for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

#### § 590.29 Applicable Federal Laws and Regulations.

(a) *Nondiscrimination.* Every phase of an approved local urban homesteading program is to be implemented in accordance with the requirements of title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. Approved local urban homesteading programs shall also comply with Section 504 of the Rehabilitation

Act of 1973 which prohibits discrimination against the handicapped.

(b) *National Environmental Policy Act.* In implementing and administering the Urban Homesteading Program, HUD shall comply with the National Environmental Policy Act of 1969 and all rules, regulations, and requirements issued pursuant thereto.

(c) *National Historic Preservation Act.* In implementing and administering the Urban Homesteading Program, HUD shall comply with the National Historic Preservation Act (Pub. L. 89-665), the Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(d) *Lead-Based Paint Poisoning Prevention Act.* Local urban homesteading agencies shall comply with the Department's Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint; elimination of immediate lead-based paint hazards in any residential structure transferred under this part; and notification of the hazards of lead-based paint poisoning to potential homesteaders in residential units constructed prior to 1950 and assisted under this part.

(e) *Acquisition and Relocation.* If a local urban homesteading agency acquires real property for an urban homesteading program approved under the regulations in this part, it shall comply with HUD relocation and acquisition regulations at 24 CFR Part 42.

#### § 590.31 HUD Review of Local Urban Homesteading Agency's Performance.

(a) HUD will review each local urban homesteading agency's performance at least annually to determine whether:

(1) The program complied with the requirements of Title VIII, Section 810, of the 1974 Act, as amended, the implementing regulations, and other applicable laws and regulations;

(2) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(3) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner.

(b) In reviewing a local urban homesteading agency's performance, HUD will consider all available evidence which may include, but need not be limited to the following:

(1) Records maintained by the local urban homesteading agency;

(2) Results of HUD's monitoring of local urban homesteading agency's performance;

(3) Audit reports whether conducted by the local urban homesteading agency or by HUD auditors; and

(4) Records of comments and complaints by citizens and organizations, or litigation.

#### § 590.33 Corrective and Remedial Action.

(a) When HUD determines on the basis of its review that there is a deficiency in the local urban homesteading agency's performance, the HUD Area office shall take one or more of the following corrective or remedial actions that are appropriate for the circumstances:

(1) Issue a letter of warning that advises the local urban homesteading

agency of the deficiency and puts it on notice that more serious corrective and remedial actions will be taken if the deficiency is not corrected or is repeated;

(2) Advise the local urban homesteading agency to suspend, discontinue or not incur costs for the defective aspect(s) of the local program;

(3) Condition the renewal of the Urban Homesteading Agreement if there is substantial evidence of a lack of progress, noncompliance, or a lack of a continuing capacity. In such cases, the reasons for the conditional renewal and the actions necessary to remove the condition shall be specified; or

(4) Cancel the Urban Homesteading Agreement and explain the reasons for such action.

#### § 590.35 Evaluation by HUD.

Local urban homesteading agencies shall supply data or make available such records as are necessary for the completion of HUD's annual evaluation of the Urban Homesteading Program.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 31, 1978.

ROBERT C. EMORY,  
Assistant Secretary for Community Planning and Development.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing—Federal Housing Commissioner.

(FR Doc. 78-35905 Filed 12-28-78; 8:45 am)



**FRIDAY, DECEMBER 29, 1978**

**PART IV**



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**DEPARTMENT OF  
HEALTH,  
EDUCATION, AND  
WELFARE**

**Health Resources  
Administration**

■

**LIST OF HEALTH  
MANPOWER SHORTAGE  
AREAS**

**Designated Under Section 332 of  
Public Health Service Act**



[4110-83-M]

DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE

Health Resources Administration

## HEALTH MANPOWER SHORTAGE AREAS DESIGNATED UNDER SECTION 332 OF THE PUBLIC HEALTH SERVICE ACT

## List of Dental Manpower Shortage Areas

1. *Purpose.* This notice provides an updated list of those dental health manpower shortage areas designated by the Secretary of Health, Education, and Welfare through October 31, 1978, under the authority of section 332 of the Public Health Service Act.

2. *Background.* Section 332 of the Public Health Service Act, as amended by Pub. L. 94-484 (the Health Professions Educational Assistance Act of 1976), provides that the Secretary of Health, Education, and Welfare shall designate health manpower shortage areas in accordance with criteria established under section 332(b). Health manpower shortage areas are defined in section 332(a) to include (1) urban and rural geographic areas, (2) population groups, and (3) facilities with shortages of health manpower. Section 332(d) requires that the Secretary publish a list of the designated geographic areas, population groups, and facilities; and regulations implementing this authority (42 CFR Part 5) provide that periodic updates of the list be published. The Health Resources Administration's Bureau of Health Manpower has been assigned the responsibility for designating these areas.

This is the third list of health manpower shortage areas designated under section 332. The first list was published July 17, 1978, and included six different types of health manpower shortage areas (primary medical care, dental, vision care, podiatry, pharmacy, and veterinary manpower). The second list, published September 28, 1978, represented an update of designated primary medical manpower shortage areas only. The list below represents an update of designated dental manpower shortage areas only, and includes all such areas which had been designated by October 31, 1978.

Public or non-profit entities in (or with a demonstrated interest in) these areas are eligible to apply for assignment of National Health Service Corps personnel to provide health services in or to the areas. These areas are also eligible service areas for Public Health Service loan repayment and scholarship programs, and entities located in the areas are eligible to apply for (or receive preference for) certain grant programs under the Public Health Service Act.

3. *Development of list.* Criteria for the designation of health manpower shortage areas in accordance with section 332(b) were published by the Department of Health, Education, and Welfare as Interim-Final Regulations in the FEDERAL REGISTER of January 10, 1978 (43 FR 1586). Data available to the Bureau of Health Manpower on counties and small areas throughout the country were then compared with these criteria, and preliminary listings were developed of those areas which tentatively appeared to meet the criteria. These preliminary listings were submitted to the appropriate Health Systems Agencies (HSAs), State Health Planning and Development Agencies (SHPDAs) and Governors for their review and recommendations. In addition, the many requests received for designation of particular areas, population groups, or facilities were also submitted to the appropriate HSAs, SHPDAs, and Governors for review and recommendations.

Each request for designation was reviewed by the Bureau of Health Manpower together with any recommendations received concerning these designations, and a determination was made as to whether or not the areas involved met the shortage criteria. The results of these determinations were then provided by letter to the requesting agency or individual, with copies to other appropriate agencies and to interested organizations and persons. Where a review resulted in designation of one or more areas, this letter constituted the official notice of designation. The same procedure was applied in reviewing agencies' responses to the listings sent to them for review.

The list below represents, for dental health manpower, a compilation of those areas, population groups and facilities already formally designated by letter by the Bureau of Health Manpower between January 10 (the date of the publication of the Interim-Final Regulations in the FEDERAL REGISTER) and October 31, 1978.

4. *Format of list.* The list of areas is arranged by State. Within each State, the list is first presented by county. In those cases where a portion (or portions) of a county has been designated, the service area(s) involved are listed under the county name. Following the county listing, a list of these service areas is presented showing their component parts in terms of census tracts (C.T.), towns, townships, minor civil divisions (M.C.D.) or census county divisions (C.C.D.).

Where population groups or facilities have been designated, these are listed under the county name(s) in which the population resides or the facility is located.

Beside each designated area, the appropriate "degree of shortage" group is indicated, corresponding to the criteria for these groupings contained in the Interim-Final Regulations. (Group I represents areas with the highest degree of shortage, Group II with the next highest degree of shortage, etc.)

In addition to the specific listings shown here, all members of Indian tribes within the meaning of the definition in section 4(d) of Pub. L. 94-437, the Indian Health Care Improvement Act of 1976, are considered designated as population groups with a health manpower shortage.

5. *Supplemental list of NHSC-staffed sites previously designated under section 329(b).* Under section 407(c) of Pub. L. 94-484, areas which had been designated under section 329(b) of the Public Health Service Act as of September 30, 1977, and in which National Health Service Corps (NHSC) personnel were providing health services on that date, are automatically designated as health manpower shortage areas under section 332, until the end of the assignment period of those personnel. A supplementary list of dental areas in this category follows the list of dental manpower shortage areas designated using the new criteria.

The designation of any area listed on this supplemental list will lapse at the end of the current NHSC assignment period unless, prior to that time, it is determined that the area satisfies the new criteria and notification of redesignation under section 332 is made.

The format for this list of areas is also by State. Within each State, the name of the previously designated area is given, followed by the name of the clinic or other facility staffed, and the community and county in which the facility is located. Any facility for which the previous designation could not be identified was not included in this list.

6. *Future updates of list of designated areas.* The list below consists of those dental manpower shortage areas designated by October 31, 1978. Updates of the lists of other types of shortage areas will be published at a later date. Additions to and deletions from these lists are made continuously, by letter to affected agencies and persons; further updates of all the lists will be published periodically in the FEDERAL REGISTER. It should be noted that some additional dental manpower shortage areas may have been designated between October 31 and the date of this notice, and the appropriate agencies and persons notified of the designation. Although officially designated, these areas are not included in the list below.

Any designated area listed below is subject to withdrawal from designation if new information is presented to

and confirmed by the Bureau of Health Manpower indicating that the situation in the area has changed, or that erroneous or incomplete data were used in making the original designation.

For further information on these designations, to request additional designations, or to request withdrawal of any designation, please contact: Division of Manpower Analysis, Bureau of Health Manpower, Health Resources Administration, Attn: Shortage Area Designation Staff, Center Building, Room 4-41, 3700 East-West Highway, Hyattsville, Md. 20782.

All requests for designation or withdrawal should be based on the criteria as published in the Interim-Final Regulations, which appeared in the FEDERAL REGISTER on January 10, 1978.

Dated: November 28, 1978.

HENRY A. FOLEY,  
Administrator, Health  
Resources Administration.HEALTH MANPOWER SHORTAGE  
AREAS—DENTAL CARE

## ALABAMA

## County Listing

| County name    | Degree of shortage group |
|----------------|--------------------------|
| Bullock.....   | 01                       |
| Chambers.....  | 02                       |
| Cherokee.....  | 02                       |
| Clay.....      | 01                       |
| Cleburne.....  | 01                       |
| Coosa.....     | 01                       |
| Crenshaw.....  | 01                       |
| Cullman.....   | 03                       |
| Dale.....      | 01                       |
| De Kalb.....   | 03                       |
| Franklin.....  | 04                       |
| Geneva.....    | 03                       |
| Hale.....      | 02                       |
| Jackson.....   | 04                       |
| Lamar.....     | 01                       |
| Lawrence.....  | 01                       |
| Lowndes.....   | 02                       |
| Marion.....    | 04                       |
| Pickens.....   | 04                       |
| Randolph.....  | 02                       |
| Talladega..... | 03                       |
| Winston.....   | 03                       |

## ALASKA

## Division Listing

| Division name                     | Degree of shortage group |
|-----------------------------------|--------------------------|
| Aleutian Islands division.....    | 01                       |
| Angoon division.....              | 01                       |
| Barrow division.....              | 01                       |
| Bethel division.....              | 03                       |
| Bristol Bay Borough division:     |                          |
| Service area; Bristol Bay.....    | 01                       |
| Bristol Bay division:             |                          |
| Service area; Bristol Bay.....    | 01                       |
| Kobuk division.....               | 04                       |
| Kuskokwim division.....           | 01                       |
| Nome division.....                | 04                       |
| Outer Ketchikan division.....     | 01                       |
| Prince of Wales division.....     | 01                       |
| Skagway-Yakutat division.....     | 01                       |
| Southeast-Fairbanks division..... | 01                       |

## ALASKA—Continued

## Division Listing

| Division name                       | Degree of shortage group |
|-------------------------------------|--------------------------|
| Upper Yukon division.....           | 01                       |
| Valdez-Chitina-Whitt. division..... | 01                       |
| Wade Hampton division.....          | 01                       |
| Yukon-Koyukuk division.....         | 01                       |

## Service Area Listing

| Service area name            | Degree of shortage group |
|------------------------------|--------------------------|
| Bristol Bay.....             | 01                       |
| Bristol Bay Borough division |                          |
| Bristol Bay division         |                          |

## ARIZONA

## County Listing

| County name                                | Degree of shortage group |
|--------------------------------------------|--------------------------|
| Apache:                                    |                          |
| Service area, Southeast/South Central      |                          |
| Apache County.....                         | 02                       |
| Gila.....                                  | 04                       |
| Greenlee.....                              | 03                       |
| Maricopa:                                  |                          |
| Service area, South Phoenix.....           | 01                       |
| Navajo:                                    |                          |
| Service area, Hopi Indian Reservation..... | 01                       |
| Pima:                                      |                          |
| Service area, El Rio.....                  | 01                       |
| Service area, Marana.....                  | 02                       |
| Pinal.....                                 | 04                       |
| Santa Cruz.....                            | 02                       |

## Service Area Listing

| Service area name            | Degree of shortage group |
|------------------------------|--------------------------|
| El Rio.....                  | 01                       |
| County—Pima:                 |                          |
| Parts of county:             |                          |
| C.T. 1.....                  |                          |
| C.T. 2.....                  |                          |
| C.T. 3.....                  |                          |
| C.T. 4.....                  |                          |
| C.T. 5.....                  |                          |
| C.T. 6.....                  |                          |
| C.T. 7.....                  |                          |
| C.T. 8.....                  |                          |
| C.T. 9.....                  |                          |
| C.T. 10.....                 |                          |
| C.T. 11.....                 |                          |
| C.T. 12.....                 |                          |
| C.T. 13.02.....              |                          |
| C.T. 22.....                 |                          |
| C.T. 23.....                 |                          |
| C.T. 24.....                 |                          |
| C.T. 25.01.....              |                          |
| C.T. 27.01.....              |                          |
| C.T. 27.02.....              |                          |
| C.T. 27.03.....              |                          |
| C.T. 38.....                 |                          |
| C.T. 39.....                 |                          |
| Hopi Indian Reservation..... | 01                       |
| County—Navajo:               |                          |
| Parts of county:             |                          |
| Hopi Division.....           |                          |
| Marana.....                  | 02                       |
| County—Pima:                 |                          |
| Parts of county:             |                          |
| Marana CCD.....              |                          |
| South Phoenix.....           | 02                       |
| County—Maricopa:             |                          |
| Parts of county:             |                          |
| C.T. 1152.....               |                          |
| C.T. 1153.....               |                          |
| C.T. 1154.....               |                          |
| C.T. 1155.....               |                          |
| C.T. 1156.....               |                          |

## ARIZONA—Continued

## Service Area Listing

| Service area name                          | Degree of shortage group |
|--------------------------------------------|--------------------------|
| C.T. 1157.....                             |                          |
| C.T. 1158.....                             |                          |
| C.T. 1159.....                             |                          |
| C.T. 1160.....                             |                          |
| C.T. 1161.....                             |                          |
| C.T. 1162.01.....                          |                          |
| C.T. 1162.02.....                          |                          |
| C.T. 1163.....                             |                          |
| C.T. 1164.....                             |                          |
| C.T. 1165.....                             |                          |
| C.T. 1166.....                             |                          |
| C.T. 1167.....                             |                          |
| Southeast/South Central Apache County..... | 01                       |
| County—Apache:                             |                          |
| Parts of county:                           |                          |
| St. Johns.....                             |                          |
| Round Valley.....                          |                          |
| Puerco.....                                |                          |

## ARKANSAS

## County Listing

| County name      | Degree of shortage group |
|------------------|--------------------------|
| Ashley.....      | 04                       |
| Calhoun.....     | 01                       |
| Chicot.....      | 03                       |
| Cleveland.....   | 01                       |
| Dallas.....      | 04                       |
| Grant.....       | 03                       |
| Hempstead.....   | 04                       |
| Lafayette.....   | 01                       |
| Lawrence.....    | 04                       |
| Lincoln.....     | 02                       |
| Mississippi..... | 04                       |
| Monroe.....      | 03                       |
| Nevada.....      | 03                       |
| Poinsett.....    | 02                       |
| Randolph.....    | 03                       |

## CALIFORNIA

## County Listing

| County name                                     | Degree of shortage group |
|-------------------------------------------------|--------------------------|
| Fresno:                                         |                          |
| Service area, Huron/Five Points.....            | 01                       |
| San Benito.....                                 | 04                       |
| San Francisco:                                  |                          |
| Service area, Potrero Hill/South Bay-shore..... | 02                       |
| San Joaquin:                                    |                          |
| Migrant and seasonal farmworkers.....           | 01                       |
| Santa Clara:                                    |                          |
| Service area, Loma Prieta School District.....  | 01                       |
| Santa Cruz:                                     |                          |
| Service area, Loma Prieta School District.....  | 01                       |

## Service Area Listing

| Service area name                | Degree of shortage group |
|----------------------------------|--------------------------|
| Huron/Five Points.....           | 01                       |
| County—Fresno:                   |                          |
| Parts of county:                 |                          |
| C.T. 78.....                     |                          |
| Loma Prieta School District..... |                          |
| County—Santa Clara:              |                          |
| Parts of County:                 |                          |
| Lexington division (part).....   |                          |
| County—Santa Cruz:               |                          |
| Parts of county:                 |                          |
| San Lorenzo Valley (part).....   |                          |



**CALIFORNIA—Continued**  
**Service Area Listing**

| Service area name                     | Degree of shortage group |
|---------------------------------------|--------------------------|
| Scotts Valley division (part)         |                          |
| Migrant and Seasonal farmworkers..... | 01                       |
| County—San Joaquin                    |                          |
| Potrero Hill/South Bayshore .....     | 03                       |
| County—San Francisco:                 |                          |
| Parts of county:                      |                          |
| C.T. 180                              |                          |
| C.T. 226, 227                         |                          |
| C.T. 230-234                          |                          |
| C.T. 606-610                          |                          |

**COLORADO**  
**County Listing**

| County name                  | Degree of shortage group |
|------------------------------|--------------------------|
| Pueblo:                      |                          |
| Service area, Avondale ..... | 02                       |

**Service Area Listing**

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| Avondale .....    | 02                       |
| County—Pueblo:    |                          |
| Parts of county:  |                          |
| C.T. 30.01        |                          |
| C.T. 30.02        |                          |
| C.T. 31.02        |                          |
| C.T. 32           |                          |
| C.T. 33           |                          |
| C.T. 34           |                          |

**CONNECTICUT**  
**County Listing**

| County name                            | Degree of shortage group |
|----------------------------------------|--------------------------|
| Hartford:                              |                          |
| Service area, North/Northcentral Hart- |                          |
| ford .....                             | 2                        |

**Service Area Listing**

| Service area name                 | Degree of shortage group |
|-----------------------------------|--------------------------|
| North/Northcentral Hartford ..... | 02                       |
| County—Hartford:                  |                          |
| Parts of County:                  |                          |
| C.T. 5008                         |                          |
| C.T. 5009                         |                          |
| C.T. 5010                         |                          |
| C.T. 5012                         |                          |
| C.T. 5013                         |                          |
| C.T. 5014                         |                          |
| C.T. 5015                         |                          |
| C.T. 5017                         |                          |
| C.T. 5018                         |                          |
| C.T. 5035                         |                          |
| C.T. 5037                         |                          |

**FLORIDA**  
**County Listing**

| County name     | Degree of shortage group |
|-----------------|--------------------------|
| Citrus .....    | 04                       |
| Dixie .....     | 02                       |
| Gilchrist ..... | 01                       |
| Hamilton .....  | 01                       |
| Hernando .....  | 02                       |
| Lafayette ..... | 01                       |
| Lee .....       | 01                       |
| Putnam .....    | 04                       |
| Sumter .....    | 03                       |
| Suwannee .....  | 03                       |

**GEORGIA**  
**County Listing**

| County name                             | Degree of shortage group |
|-----------------------------------------|--------------------------|
| Atkinson .....                          | 01                       |
| Banks .....                             | 02                       |
| Ben Hill .....                          | 04                       |
| Brantley .....                          | 01                       |
| Brooks .....                            | 03                       |
| Bryan .....                             | 01                       |
| Butts .....                             | 03                       |
| Calhoun .....                           | 02                       |
| Camden .....                            | 04                       |
| Candler .....                           | 03                       |
| Chattooga .....                         | 02                       |
| Clarke:                                 |                          |
| Service area, Athens Neighborhood       |                          |
| Health Center .....                     | 01                       |
| Clinch .....                            | 01                       |
| Coffee .....                            | 03                       |
| Crisp .....                             | 04                       |
| Dawson .....                            | 01                       |
| Decatur .....                           | 04                       |
| Dooly .....                             | 02                       |
| Early .....                             | 04                       |
| Emanuel .....                           | 03                       |
| Fannin .....                            | 04                       |
| Franklin .....                          | 04                       |
| Glascok:                                |                          |
| Service area, Tri-county .....          | 01                       |
| Grady .....                             | 04                       |
| Greene .....                            | 04                       |
| Haralson .....                          | 02                       |
| Hart .....                              | 03                       |
| Heard .....                             | 01                       |
| Irwin .....                             | 02                       |
| Jefferson .....                         | 03                       |
| Jenkins .....                           | 01                       |
| Lamar .....                             | 04                       |
| Lanier .....                            | 01                       |
| Lee .....                               | 03                       |
| Liberty .....                           | 03                       |
| Lincoln .....                           | 03                       |
| Long .....                              | 01                       |
| Lumpkin .....                           | 04                       |
| Madison .....                           | 02                       |
| Meriwether .....                        | 03                       |
| Miller .....                            | 03                       |
| Mitchell .....                          | 01                       |
| Murray .....                            | 01                       |
| Oconee .....                            | 01                       |
| Oglethorpe .....                        | 01                       |
| Pickens .....                           | 03                       |
| Pike .....                              | 01                       |
| Screven .....                           | 01                       |
| Seminole .....                          | 01                       |
| Taliaferro:                             |                          |
| Service area, Tri-county .....          | 04                       |
| Tattnall .....                          | 02                       |
| Union .....                             | 02                       |
| Warren:                                 |                          |
| Service area, Tri-county .....          | 01                       |
| Worth .....                             | 03                       |
| Athens Neighborhood Health Center ..... | 01                       |
| County—Clarke:                          |                          |
| Parts of county:                        |                          |
| C.T. 2                                  |                          |

**GEORGIA—Continued**  
**Service Area Listing**

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| C.T. 3            |                          |
| C.T. 6            |                          |
| C.T. 9            |                          |
| Tri-County .....  | 01                       |
| County—Glascok    |                          |
| County—Taliaferro |                          |
| County—Warren     |                          |

**HAWAII**  
**County Listing**

| County name                      | Degree of shortage group |
|----------------------------------|--------------------------|
| Hawaii:                          |                          |
| Service area, Kau .....          | 01                       |
| Honolulu:                        |                          |
| Service area, Wainae Coast ..... | 04                       |

**Service Area Listing**

| Service area name  | Degree of shortage group |
|--------------------|--------------------------|
| Kau .....          | 01                       |
| County—Hawaii:     |                          |
| Parts of county:   |                          |
| C.T. 212           |                          |
| Wainae Coast ..... | 04                       |
| County—Honolulu:   |                          |
| Parts of county:   |                          |
| C.T. 96.01         |                          |
| C.T. 96.02         |                          |
| C.T. 97            |                          |
| C.T. 98            |                          |

**IDAHO**  
**County Listing**

| County name | Degree of shortage group |
|-------------|--------------------------|
| Idaho ..... | 03                       |

**ILLINOIS**  
**County Listing**

| County name                           | Degree of shortage group |
|---------------------------------------|--------------------------|
| Alexander:                            |                          |
| Service area, Southern Illinois ..... | 02                       |
| Brown .....                           | 04                       |
| Calhoun .....                         | 01                       |
| Cook:                                 |                          |
| Service area, Robbins .....           | 02                       |
| Service area, Uptown .....            | 04                       |
| Greene .....                          | 04                       |
| Hancock .....                         | 04                       |
| Hardin:                               |                          |
| Service area, Southern Illinois ..... | 02                       |
| Henderson .....                       | 02                       |
| Jackson .....                         | 04                       |
| Johnson:                              |                          |
| Service area, Southern Illinois ..... | 02                       |
| Kankakee:                             |                          |
| Service area, Kankakee .....          | 01                       |
| Macoupin .....                        | 04                       |
| Massac:                               |                          |
| Service area, Southern Illinois ..... | 02                       |
| Pope:                                 |                          |
| Service area, Southern Illinois ..... | 02                       |

**ILLINOIS—Continued**  
**Service Area Listing**

| Service area name                          | Degree of shortage group |
|--------------------------------------------|--------------------------|
| Pulaski:                                   |                          |
| Service area, Southern Illinois .....      | 02                       |
| Scott .....                                | 01                       |
| Will:                                      |                          |
| Service area, Joliet Correctional Institu- |                          |
| tion .....                                 | 01                       |
| Service area, Statesville Correctional In- |                          |
| stitution .....                            | 01                       |

**Service Area Listing**

| Service area name                          | Degree of shortage group |
|--------------------------------------------|--------------------------|
| Joliet Correctional Institution .....      | 01                       |
| County—Will:                               |                          |
| Parts of county:                           |                          |
| Joliet Correctional Institution            |                          |
| Pembroke .....                             | 01                       |
| County—Kankakee:                           |                          |
| Parts of county:                           |                          |
| Pembroke Township                          |                          |
| Robbins .....                              | 02                       |
| County—Cook:                               |                          |
| Parts of county:                           |                          |
| Hoffman Village                            |                          |
| Southern Illinois .....                    | 02                       |
| County—Alexander                           |                          |
| County—Hardin                              |                          |
| County—Johnson                             |                          |
| County—Massac                              |                          |
| County—Pope                                |                          |
| County—Pulaski                             |                          |
| Statesville Correctional Institution ..... | 01                       |
| County—Will:                               |                          |
| Parts of county:                           |                          |
| Statesville Correctional Institution       |                          |
| Uptown .....                               | 04                       |
| County—Cook:                               |                          |
| Parts of county:                           |                          |
| C.T. 310                                   |                          |
| C.T. 311                                   |                          |
| C.T. 312                                   |                          |
| C.T. 315                                   |                          |
| C.T. 316                                   |                          |
| C.T. 317                                   |                          |
| C.T. 318                                   |                          |
| C.T. 319                                   |                          |
| C.T. 320                                   |                          |
| C.T. 321                                   |                          |

**INDIANA**  
**County Listing**

| County name                         | Degree of shortage group |
|-------------------------------------|--------------------------|
| Crawford .....                      | 03                       |
| Lagrange .....                      | 04                       |
| Lake:                               |                          |
| Service area, Gary/area No. 1 ..... | 01                       |
| Martin .....                        | 03                       |
| Miami .....                         | 03                       |
| Owen .....                          | 02                       |
| Pike .....                          | 04                       |
| Starke .....                        | 04                       |

**Service Area Listing**

| Service area name     | Degree of shortage group |
|-----------------------|--------------------------|
| Gary/area No. 1 ..... | 01                       |
| County—Lake:          |                          |
| Parts of county:      |                          |
| C.T. 101              |                          |

**INDIANA—Continued**  
**Service Area Listing**

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| C.T. 102          |                          |
| C.T. 103          |                          |
| C.T. 104          |                          |
| C.T. 105          |                          |
| C.T. 106          |                          |
| C.T. 107          |                          |
| C.T. 108          |                          |
| C.T. 109          |                          |
| C.T. 110          |                          |
| C.T. 111          |                          |
| C.T. 112          |                          |
| C.T. 113          |                          |
| C.T. 114          |                          |
| C.T. 115          |                          |
| C.T. 116          |                          |
| C.T. 117          |                          |
| C.T. 118          |                          |
| C.T. 119          |                          |
| C.T. 120          |                          |
| C.T. 121          |                          |
| C.T. 122          |                          |
| C.T. 123          |                          |
| C.T. 124          |                          |
| C.T. 125          |                          |
| C.T. 126          |                          |
| C.T. 127          |                          |
| C.T. 128          |                          |
| C.T. 129          |                          |

**IOWA**  
**County Listing**

| County name                               | Degree of shortage group |
|-------------------------------------------|--------------------------|
| Adair .....                               | 03                       |
| Appanoose:                                |                          |
| Service area, Albia .....                 | 04                       |
| Benton:                                   |                          |
| Service area, Belle Plaine .....          | 03                       |
| Cedar:                                    |                          |
| Service area, Clarence-Wheatland .....    | 03                       |
| Clarke:                                   |                          |
| Service area, Osceola .....               | 02                       |
| Clayton:                                  |                          |
| Service area, southern Clayton County ..  | 04                       |
| Clinton:                                  |                          |
| Service area, Clarence-Wheatland .....    | 03                       |
| Crawford:                                 |                          |
| Service area, Onawa-Mapleton .....        | 03                       |
| Decatur .....                             | 02                       |
| Guthrie .....                             | 03                       |
| Harrison:                                 |                          |
| Service area, Logan .....                 | 04                       |
| Iowa:                                     |                          |
| Service area, Brooklyn-Montezuma .....    | 03                       |
| Jasper:                                   |                          |
| Service area, Brooklyn-Montezuma .....    | 03                       |
| Jones:                                    |                          |
| Service area, Clarence-Wheatland .....    | 03                       |
| Service area, State Correctional Institu- |                          |
| tions .....                               | 01                       |
| Keokuk .....                              | 04                       |
| Lee:                                      |                          |
| Service area, State Correctional Institu- |                          |
| tions .....                               | 01                       |
| Louisa .....                              | 04                       |
| Lucas:                                    |                          |
| Service area, Chariton .....              | 04                       |
| Madison:                                  |                          |
| Service area, Osceola .....               | 02                       |
| Mahaska:                                  |                          |
| Service area, Brooklyn-Montezuma .....    | 03                       |
| Marion:                                   |                          |
| Service area, Albia .....                 | 04                       |
| Monona:                                   |                          |
| Service area, Logan .....                 | 04                       |
| Service area, Onawa-Mapleton .....        | 03                       |
| Monroe:                                   |                          |
| Service area, Albia .....                 | 04                       |
| Service area, Chariton .....              | 04                       |
| Polk:                                     |                          |
| Dentally indigent population .....        | 01                       |
| Pottawattamie:                            |                          |
| Service area, Logan .....                 | 04                       |

**IOWA—Continued**  
**County Listing**

| County name                            | Degree of shortage group |
|----------------------------------------|--------------------------|
| Poweshiek:                             |                          |
| Service area, Brooklyn-Montezuma ..... | 03                       |
| Scott:                                 |                          |
| Service area, Clarence-Wheatland ..... | 03                       |
| Shelby:                                |                          |
| Service area, Logan .....              | 04                       |
| Tama:                                  |                          |
| Service area, Belle Plaine .....       | 03                       |
| Taylor:                                |                          |
| Service area, Bedford .....            | 02                       |
| Union:                                 |                          |
| Service area, Osceola .....            | 02                       |
| Van Buren .....                        | 02                       |
| Wapello:                               |                          |
| Service area, Albia .....              | 04                       |
| Warren:                                |                          |
| Service area, Osceola .....            | 02                       |
| Service area, Chariton .....           | 04                       |
| Wayne .....                            | 04                       |
| Woodbury:                              |                          |
| Service area, Onawa-Mapleton .....     | 03                       |

**Service Area Listing**

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| Albia .....              | 04                       |
| County—Appanoose:        |                          |
| Parts of county:         |                          |
| Monrovia Town            |                          |
| County—Marion:           |                          |
| Parts of county:         |                          |
| Hamilton Town            |                          |
| County—Monroe:           |                          |
| Parts of county:         |                          |
| Albia City               |                          |
| Lovilla Town             |                          |
| County—Wapello:          |                          |
| Parts of county:         |                          |
| Blakesburg Town          |                          |
| Bedford .....            | 02                       |
| County—Taylor:           |                          |
| Parts of county:         |                          |
| Bedford Town             |                          |
| Gravity Town             |                          |
| Conway Town              |                          |
| New Market Town          |                          |
| Sharpsburg Town          |                          |
| Athelstan Town           |                          |
| Blockton Town            |                          |
| Clearfield Town          |                          |
| Belle Plaine .....       | 03                       |
| County—Benton:           |                          |
| Parts of county:         |                          |
| Belle Plaine Town        |                          |
| Luzerne Town             |                          |
| Keystone Town            |                          |
| County—Tama:             |                          |
| Parts of county:         |                          |
| Elberon Town             |                          |
| Vining Town              |                          |
| Chelsea Town             |                          |
| Brooklyn-Montezuma ..... | 03                       |
| County—Iowa:             |                          |
| Parts of county:         |                          |
| Victor Town              |                          |
| County—Jasper:           |                          |
| Parts of county:         |                          |
| Lynnville Town           |                          |
| County—Mahaska:          |                          |
| Parts of county:         |                          |
| Barnes City Town         |                          |
| County—Poweshiek:        |                          |
| Parts of county:         |                          |
| Brooklyn Town            |                          |
| Guernsey Town            |                          |
| Victor Town              |                          |
| Hartwick Town            |                          |
| Montezuma Town           |                          |
| Searshoro Town           |                          |
| Barnes City Town         |                          |
| Deep River Town          |                          |



IOWA—Continued  
Service Area Listing

| Service area name                 | Degree of shortage group |
|-----------------------------------|--------------------------|
| Malcom Town                       |                          |
| Chariton.....                     | 01                       |
| County—Lucas:                     |                          |
| Parts of county:                  |                          |
| Chariton Township                 |                          |
| Lucas Town                        |                          |
| Derby Town                        |                          |
| Russell Town                      |                          |
| Williamson Town                   |                          |
| County—Monroe:                    |                          |
| Parts of county:                  |                          |
| Melrose Town                      |                          |
| County—Warren:                    |                          |
| Parts of county:                  |                          |
| Lacona Town                       |                          |
| Clarence-Wheatland.....           | 03                       |
| County—Cedar:                     |                          |
| Parts of county:                  |                          |
| Clarence Town                     |                          |
| Lowden Town                       |                          |
| Stanwood Town                     |                          |
| County—Clinton:                   |                          |
| Parts of county:                  |                          |
| Lost Nation Town                  |                          |
| Calamus Town                      |                          |
| Wheatland Town                    |                          |
| Clarence-Wheatland.....           | 01                       |
| County—Clinton:                   |                          |
| Parts of county:                  |                          |
| Toronto Town                      |                          |
| County—Jones:                     |                          |
| Parts of county:                  |                          |
| Olin Town                         |                          |
| Wyoming Town                      |                          |
| Oxford Junction Town              |                          |
| County—Scott:                     |                          |
| Parts of county:                  |                          |
| Dixon Town                        |                          |
| New Liberty Town                  |                          |
| Dentally indigent population..... | 01                       |
| Logan.....                        | 04                       |
| County—Harrison:                  |                          |
| Parts of county:                  |                          |
| Logan Town                        |                          |
| Magnolia Town                     |                          |
| Woodbine Town                     |                          |
| Missouri Valley Town              |                          |
| Modale Town                       |                          |
| Persia Town                       |                          |
| Mondamin Town                     |                          |
| Pisgah Town                       |                          |
| Little Sioux Town                 |                          |
| County—Monona:                    |                          |
| Parts of county:                  |                          |
| Moorhead Town                     |                          |
| County—Pottawattamie:             |                          |
| Parts of county:                  |                          |
| Neola Town                        |                          |
| Underwood Town                    |                          |
| County—Shelby:                    |                          |
| Parts of county:                  |                          |
| Portsmouth Town                   |                          |
| Panama Town                       |                          |
| Tennant Town                      |                          |
| Onawa-Mapleton.....               | 03                       |
| County—Crawford:                  |                          |
| Parts of county:                  |                          |
| Charter Oak Town                  |                          |
| Ricketts Town                     |                          |
| County—Monona:                    |                          |
| Parts of county:                  |                          |
| Whiting Town                      |                          |
| Turin Town                        |                          |
| Castana Town                      |                          |
| Mapleton Town                     |                          |
| Rodney Town                       |                          |
| Onawa Town                        |                          |
| Ute Town                          |                          |
| Soldier Town                      |                          |
| County—Woodbury:                  |                          |
| Parts of county:                  |                          |
| Anthorn Town                      |                          |
| Oto Town                          |                          |
| Hornick Town                      |                          |
| Smithland Town                    |                          |
| Danbury Town                      |                          |

IOWA—Continued  
Service Area Listing

| Service area name                    | Degree of shortage group |
|--------------------------------------|--------------------------|
| Osceola.....                         | 01                       |
| County—Clarke:                       |                          |
| County—Madison:                      |                          |
| Parts of county:                     |                          |
| Truro Town                           |                          |
| County—Union:                        |                          |
| Parts of county:                     |                          |
| Afton                                |                          |
| Arispe                               |                          |
| Lorimar                              |                          |
| Thayer                               |                          |
| County—Warren:                       |                          |
| Parts of county:                     |                          |
| New Virginia Town                    |                          |
| Southern Clayton County.....         | 04                       |
| County—Clayton:                      |                          |
| Parts of county:                     |                          |
| Guttenberg City                      |                          |
| Garber Town                          |                          |
| Southern Clayton County.....         | 04                       |
| County—Clayton:                      |                          |
| Parts of county:                     |                          |
| Elkport Town                         |                          |
| North Buena Vista Town               |                          |
| Elkader Town                         |                          |
| Saint Olaf Town                      |                          |
| Garnaville Township                  |                          |
| Little Port Town                     |                          |
| Volga City Town                      |                          |
| Edgewood Town                        |                          |
| Strawberry Point Town                |                          |
| State Correctional Institutions..... | 01                       |
| County—Jones:                        |                          |
| Parts of county:                     |                          |
| Men's reformatory (Anamosa)          |                          |
| County—Lee:                          |                          |
| Parts of county:                     |                          |
| State penitentiary (Ft. Madison)     |                          |
| <b>KANSAS</b>                        |                          |
| <b>County Listing</b>                |                          |
| County name                          | Degree of shortage group |
| Chase.....                           | 01                       |
| Chautauqua.....                      | 03                       |
| Cherokee.....                        | 03                       |
| Coffey.....                          | 02                       |
| Comanche.....                        | 01                       |
| Elk.....                             | 04                       |
| Graham.....                          | 04                       |
| Gray.....                            | 01                       |
| Greeley.....                         | 04                       |
| Jefferson.....                       | 01                       |
| Jewell.....                          | 01                       |
| Lane.....                            | 02                       |
| Linn.....                            | 04                       |
| Meade.....                           | 01                       |
| Morton.....                          | 01                       |
| Smith.....                           | 01                       |
| Stanton.....                         | 02                       |
| Wabaunsee.....                       | 01                       |
| Wallace.....                         | 03                       |
| Woodson.....                         | 03                       |
| <b>KENTUCKY</b>                      |                          |
| <b>County Listing</b>                |                          |
| County name                          | Degree of shortage group |
| Ballard.....                         | 01                       |
| Bath.....                            | 01                       |
| Bell.....                            | 01                       |
| Service area, Western Harlan.....    | 01                       |
| Service area, Williamsburg.....      | 01                       |
| Bracken.....                         | 02                       |

KENTUCKY—Continued  
County Listing

| County name                           | Degree of shortage group |
|---------------------------------------|--------------------------|
| Breathitt.....                        | 04                       |
| Butler.....                           | 03                       |
| Carlisle.....                         | 01                       |
| Carter.....                           | 02                       |
| Casey.....                            | 01                       |
| Clay.....                             | 01                       |
| Edmonson.....                         | 01                       |
| Elliott.....                          | 01                       |
| Estill.....                           | 01                       |
| Gallatin.....                         | 01                       |
| Grant.....                            | 03                       |
| Hancock.....                          | 03                       |
| Harlan:                               |                          |
| Service area, Western Harlan.....     | 01                       |
| Service area, Cumberland.....         | 01                       |
| Jackson.....                          | 04                       |
| Johnson.....                          | 02                       |
| Knott.....                            | 02                       |
| Knox:                                 |                          |
| Service area, Williamsburg.....       | 02                       |
| Larue.....                            | 04                       |
| Laurel.....                           | 01                       |
| Leslie.....                           | 01                       |
| Lewis.....                            | 01                       |
| Lincoln.....                          | 03                       |
| Livingston.....                       | 04                       |
| Logan:                                |                          |
| Service area, Kentucky State Reforma- | 01                       |
| tory.....                             | 04                       |
| McCreary.....                         | 01                       |
| Magoffin.....                         | 01                       |
| Martin.....                           | 01                       |
| Menifee.....                          | 03                       |
| Morgan.....                           | 03                       |
| Ohio.....                             | 04                       |
| Pendleton.....                        | 02                       |
| Perry.....                            | 04                       |
| Pike.....                             | 04                       |
| Spencer.....                          | 03                       |
| Todd.....                             | 04                       |
| Trimble.....                          | 03                       |
| Webster.....                          | 03                       |
| Wolfe.....                            | 03                       |

Service Area Listing

| Service area name               | Degree of shortage group |
|---------------------------------|--------------------------|
| Cumberland.....                 | 01                       |
| County—Harlan:                  |                          |
| Parts of county:                |                          |
| Upper Clover CCD                |                          |
| Poor Fork CCD                   |                          |
| Wallins Creek CCD               |                          |
| Alva CCD                        |                          |
| Kentucky State Reformatory..... | 01                       |
| County—Lyon:                    |                          |
| Parts of county:                |                          |
| Kentucky State Reformatory..... | 01                       |
| Western Harlan.....             | 01                       |
| County—Bell:                    |                          |
| Parts of county:                |                          |
| Tejay CCD                       |                          |
| County—Harlan:                  |                          |
| Parts of county:                |                          |
| Benham-Lynch Division           |                          |
| Cumberland CCD                  |                          |
| Williamsburg.....               | 01                       |
| County—Bell:                    |                          |
| Parts of county:                |                          |
| Pruden Fonde CCD                |                          |
| County—Knox:                    |                          |
| Parts of county:                |                          |
| Barbourville West CCD           |                          |
| Barbourville CCD                |                          |
| Barbourville East CCD           |                          |
| Bryants CCD                     |                          |
| Dewitt CCD                      |                          |
| Girdler CCD                     |                          |
| Gray CCD                        |                          |
| Trooper CCD                     |                          |

LOUISIANA  
County Listing

| County name                      | Degree of shortage group |
|----------------------------------|--------------------------|
| Orleans:                         |                          |
| Service area, Irish Channel..... | 01                       |
| <b>Service Area Listing</b>      |                          |
| County name                      | Degree of shortage group |
| Irish Channel.....               | 01                       |
| County—Orleans:                  |                          |
| Parts of County:                 |                          |
| C.T. 77                          |                          |
| C.T. 78                          |                          |
| C.T. 81                          |                          |
| C.T. 83                          |                          |
| C.T. 87                          |                          |
| C.T. 88                          |                          |
| C.T. 89                          |                          |

MAINE  
County Listing

| County name                             | Degree of shortage group |
|-----------------------------------------|--------------------------|
| Aroostook:                              |                          |
| Service area, Madawaska.....            | 01                       |
| Penobscot:                              |                          |
| Service area, Dexter-Hartland.....      | 03                       |
| Service area, Northern Penobscot-Pisca- |                          |
| taquis.....                             | 02                       |
| Piscataquis:                            |                          |
| Service area, Dexter-Hartland.....      | 03                       |
| Somerset:                               |                          |
| Service area, Dexter-Hartland.....      | 03                       |

Service Area Listing

| Service area name      | Degree of shortage group |
|------------------------|--------------------------|
| Dexter-Hartland.....   | 03                       |
| County—Penobscot:      |                          |
| Parts of county:       |                          |
| Charleston Town        |                          |
| Corriana Town          |                          |
| Corinth Town (E. & S.) |                          |
| Dexter Town            |                          |
| Exeter Town            |                          |
| Garland Town           |                          |
| Newport Town           |                          |
| Stetson Town           |                          |
| Plymouth Town          |                          |
| County—Piscataquis:    |                          |
| Parts of county:       |                          |
| Abbot Town             |                          |
| Atkinson Town          |                          |
| Dover-Foxcroft Town    |                          |
| Guilford Town          |                          |
| Parkman Town           |                          |
| Sangerville Town       |                          |
| Wellington Town        |                          |
| County—Somerset:       |                          |
| Parts of county:       |                          |
| Cornville Town         |                          |
| Cambridge Town         |                          |
| Detroit Town           |                          |
| Harmony Town           |                          |
| Hartland Town          |                          |
| Palmyra Town           |                          |
| Ripley Town            |                          |
| St. Albans Town        |                          |
| Brighton Plant.        |                          |
| Athens Town            |                          |
| Canaan Township        |                          |

MAINE—Continued  
Service Area Listing

| Service area name                    | Degree of shortage group |
|--------------------------------------|--------------------------|
| Madawaska.....                       | 01                       |
| County—Aroostook:                    |                          |
| Parts of county:                     |                          |
| Grand Isle                           |                          |
| Madawaska                            |                          |
| St. Agatha                           |                          |
| Northern Penobscot-Piscataquis.....  | 02                       |
| County—Penobscot:                    |                          |
| Parts of county:                     |                          |
| Bradford Town                        |                          |
| Burlington Town                      |                          |
| Chester Town                         |                          |
| East Millinocket Town                |                          |
| Enfield Town                         |                          |
| Howland Town                         |                          |
| La Grange Town                       |                          |
| Lee Town                             |                          |
| Lincoln Town                         |                          |
| Lowell Town                          |                          |
| Mattawamkeag Town                    |                          |
| Medway Town                          |                          |
| Millinocket Town                     |                          |
| Passadumkeag Town                    |                          |
| Springfield Town                     |                          |
| Winn Town                            |                          |
| Unorganized Territory of Kingman     |                          |
| County—Piscataquis:                  |                          |
| Parts of County:                     |                          |
| Brownville Town                      |                          |
| Greenville Town                      |                          |
| Milo Town                            |                          |
| Sebec Town                           |                          |
| Shirley Town                         |                          |
| Medford Town                         |                          |
| Bowerbank Town                       |                          |
| Williamantic Town                    |                          |
| Elliottsville Plantation             |                          |
| Barnard Plantation                   |                          |
| Blanchard Plantation                 |                          |
| Kinbsburn Plantation                 |                          |
| Lake View Plantation                 |                          |
| Unorg. Territory of N. Piscataquis   |                          |
| Unorg. Territory of S.E. Piscataquis |                          |

MARYLAND  
County Listing

| County name                       | Degree of shortage group |
|-----------------------------------|--------------------------|
| Somerset County:                  |                          |
| Service area, Somerset.....       | 02                       |
| Baltimore City:                   |                          |
| Service area, Constant Care.....  | 02                       |
| Service area, East Baltimore..... | 01                       |
| Service area, West Baltimore..... | 02                       |
| Service area, Hampden/Woodberry/  |                          |
| Remington.....                    | 04                       |

Service Area Listing

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| Constant Care.....       | 02                       |
| Parts of Baltimore City: |                          |
| C.T. 402                 |                          |
| C.T. 1401                |                          |
| C.T. 1402                |                          |
| C.T. 1403                |                          |
| C.T. 1501                |                          |
| C.T. 1502                |                          |
| C.T. 1601                |                          |
| C.T. 1602                |                          |
| C.T. 1603                |                          |
| C.T. 1604                |                          |
| C.T. 1701                |                          |
| C.T. 1702                |                          |
| C.T. 1703                |                          |
| C.T. 2101                |                          |
| East Baltimore.....      | 01                       |

MARYLAND—Continued  
Service Area Listing

| Service area name                | Degree of shortage group |
|----------------------------------|--------------------------|
| Parts of Baltimore City:         |                          |
| C.T. 501                         |                          |
| C.T. 603                         |                          |
| C.T. 604                         |                          |
| C.T. 605                         |                          |
| C.T. 704                         |                          |
| C.T. 806                         |                          |
| C.T. 807                         |                          |
| C.T. 808                         |                          |
| C.T. 909                         |                          |
| C.T. 1001                        |                          |
| C.T. 1002                        |                          |
| C.T. 1004                        |                          |
| Hampden/Woodberry/Remington..... | 04                       |
| Parts of Baltimore City:         |                          |
| C.T. 1203                        |                          |
| C.T. 1206                        |                          |
| C.T. 1207                        |                          |
| C.T. 1305                        |                          |
| C.T. 1306                        |                          |
| C.T. 1308.02                     |                          |
| Somerset County.....             | 02                       |
| County—Somerset County:          |                          |
| Parts of county:                 |                          |
| C.T.0010                         |                          |
| C.T.0030                         |                          |
| C.T.0040                         |                          |
| C.T.0060                         |                          |
| C.T.0080                         |                          |
| C.T.0130                         |                          |
| C.T.0150                         |                          |
| West Baltimore.....              | 02                       |
| Parts of Baltimore City:         |                          |
| C.T. 1801                        |                          |
| C.T. 1802                        |                          |
| C.T. 1803                        |                          |
| C.T. 1901                        |                          |
| C.T. 1902                        |                          |
| C.T. 1903                        |                          |
| C.T. 2001                        |                          |
| C.T. 2002                        |                          |
| C.T. 2003                        |                          |
| C.T. 2004                        |                          |
| C.T. 2005                        |                          |

MASSACHUSETTS  
County Listing

| County name                    | Degree of shortage group |
|--------------------------------|--------------------------|
| Hampden:                       |                          |
| Service area, Worthington..... | 01                       |
| Hampshire:                     |                          |
| Service area, Worthington..... | 01                       |
| Suffolk:                       |                          |
| Service area, Allston.....     | 01                       |

Service Area Listing

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| Allston.....      | 01                       |
| County—Suffolk:   |                          |
| Parts of county:  |                          |
| C.T. 1            |                          |
| C.T. 7            |                          |
| C.T. 8            |                          |
| Worthington.....  | 01                       |
| County—Hampden:   |                          |
| Parts of county:  |                          |
| Chester Town      |                          |
| County—Hampshire: |                          |
| Parts of county:  |                          |
| Chesterfield Town |                          |
| Cummington Town   |                          |
| Goshen Town       |                          |
| Huntington Town   |                          |
| Plainfield Town   |                          |
| Worthington Town  |                          |



| MICHIGAN                                       |                          |
|------------------------------------------------|--------------------------|
| County Listing                                 |                          |
| County name                                    | Degree of shortage group |
| Arenac:                                        |                          |
| Service area, Rifle River                      | 02                       |
| Baraga:                                        |                          |
| Service area, Iron                             | 04                       |
| Houghton:                                      |                          |
| Service area, Iron                             | 04                       |
| Iosco:                                         |                          |
| Service area, Rifle River                      | 02                       |
| Iron:                                          |                          |
| Service area, Iron                             | 04                       |
| Lapeer:                                        |                          |
| Service area, Sandusky                         | 04                       |
| Marquette:                                     |                          |
| Service area, Iron                             | 04                       |
| Ogemaw:                                        |                          |
| Service area, Rifle River                      | 02                       |
| Ontonagon:                                     |                          |
| Service area, Iron                             | 04                       |
| Roscommon:                                     |                          |
| Service area, Houghton Lake—St. Helen          | 04                       |
| Sanilac:                                       |                          |
| Service area, Sandusky                         | 04                       |
| Wayne:                                         |                          |
| Service area, Beryl Spruce Center              | 03                       |
| Service area, Mom & Tots Family Center         | 03                       |
| Service area, Sumter Health Center             | 04                       |
| Service area, Wayne Co. Dept. of Health Clinic | 04                       |
| Service area, Wayne County Jail                | 02                       |
| Service area, Detroit/Wayne                    | 02                       |

| Service Area Listing    |                          |
|-------------------------|--------------------------|
| Service area name       | Degree of shortage group |
| Beryl Spruce Center     | 03                       |
| County—Wayne:           |                          |
| Parts of county:        |                          |
| C.T. 751                |                          |
| C.T. 752                |                          |
| C.T. 753                |                          |
| C.T. 754                |                          |
| C.T. 779                |                          |
| C.T. 780                |                          |
| C.T. 781                |                          |
| C.T. 782                |                          |
| C.T. 783                |                          |
| C.T. 784                |                          |
| C.T. 785                |                          |
| C.T. 786                |                          |
| C.T. 787                |                          |
| C.T. 788                |                          |
| Detroit/Wayne           | 02                       |
| County—Wayne:           |                          |
| Parts of county:        |                          |
| C.T. 153                |                          |
| C.T. 154                |                          |
| C.T. 155                |                          |
| C.T. 175                |                          |
| C.T. 176.01             |                          |
| C.T. 176.04             |                          |
| C.T. 177                |                          |
| C.T. 178                |                          |
| C.T. 179                |                          |
| C.T. 180                |                          |
| C.T. 181                |                          |
| C.T. 182                |                          |
| C.T. 183                |                          |
| C.T. 184                |                          |
| C.T. 185                |                          |
| C.T. 188                |                          |
| Houghton Lake—St. Helen | 04                       |
| County—Roscommon:       |                          |
| Parts of county:        |                          |
| Denton township         |                          |
| Roscommon township      |                          |
| Richfield township      |                          |
| Au Sable township       |                          |
| Nester township         |                          |

| MICHIGAN—Continued                        |                          |
|-------------------------------------------|--------------------------|
| Service Area Listing                      |                          |
| Service area name                         | Degree of shortage group |
| Backus township                           |                          |
| Higgins township                          |                          |
| Iron County area                          | 04                       |
| County—Baraga:                            |                          |
| Parts of county:                          |                          |
| Covington township                        |                          |
| Spurr township                            |                          |
| County—Forest—Wisconsin:                  |                          |
| Parts of county:                          |                          |
| Alvin township                            |                          |
| Pople River township                      |                          |
| County—Houghton:                          |                          |
| Parts of county:                          |                          |
| Ducan township                            |                          |
| County—Iron                               |                          |
| County—Marquette:                         |                          |
| Parts of county:                          |                          |
| Republic township                         |                          |
| County—Vilas—Wisconsin:                   |                          |
| Parts of county:                          |                          |
| Philips township                          |                          |
| Conover township                          |                          |
| County—Ontonagon:                         |                          |
| Parts of county:                          |                          |
| Interior township                         |                          |
| Mom & Tots Family Center                  | 02                       |
| County—Wayne:                             |                          |
| Parts of county:                          |                          |
| C.T. 755                                  |                          |
| C.T. 756                                  |                          |
| C.T. 757                                  |                          |
| C.T. 765                                  |                          |
| C.T. 766                                  |                          |
| C.T. 767                                  |                          |
| C.T. 768                                  |                          |
| C.T. 769                                  |                          |
| C.T. 770                                  |                          |
| C.T. 771                                  |                          |
| C.T. 772                                  |                          |
| C.T. 773                                  |                          |
| C.T. 774                                  |                          |
| C.T. 775                                  |                          |
| C.T. 776                                  |                          |
| C.T. 777                                  |                          |
| C.T. 778                                  |                          |
| C.T. 779                                  |                          |
| C.T. 789                                  |                          |
| C.T. 790                                  |                          |
| C.T. 791                                  |                          |
| C.T. 792                                  |                          |
| C.T. 797                                  |                          |
| Rifle River                               | 02                       |
| County—Arenac:                            |                          |
| Parts of county:                          |                          |
| Moffet township                           |                          |
| Clayton township                          |                          |
| Mason township                            |                          |
| County—Iosco:                             |                          |
| Parts of county:                          |                          |
| Plainfield township                       |                          |
| Reno township                             |                          |
| Burleigh township                         |                          |
| County—Ogemaw:                            |                          |
| Parts of county:                          |                          |
| Horton township                           |                          |
| Mills township                            |                          |
| Richland township                         |                          |
| Churchhill township                       |                          |
| Logan township                            |                          |
| Sandusky                                  | 04                       |
| County—Lapeer:                            |                          |
| Parts of county:                          |                          |
| Burnside township                         |                          |
| County—Sanilac                            |                          |
| Sumter Health Center                      | 04                       |
| County—Wayne:                             |                          |
| Parts of county:                          |                          |
| C.T. 937                                  |                          |
| C.T. 938.01                               |                          |
| C.T. 938.02                               |                          |
| C.T. 939                                  |                          |
| C.T. 940                                  |                          |
| C.T. 941                                  |                          |
| C.T. 942.01                               |                          |
| Wayne County, Department of Health Clinic | 04                       |

| MICHIGAN—Continued                        |                          |
|-------------------------------------------|--------------------------|
| Service Area Listing                      |                          |
| Service area name                         | Degree of shortage group |
| County—Wayne:                             |                          |
| Parts of county:                          |                          |
| C.T. 841                                  |                          |
| C.T. 842                                  |                          |
| C.T. 843                                  |                          |
| C.T. 844                                  |                          |
| C.T. 918.01                               |                          |
| C.T. 918.02                               |                          |
| C.T. 919                                  |                          |
| C.T. 942.02                               |                          |
| C.T. 943                                  |                          |
| Wayne County Jail                         | 02                       |
| County—Wayne:                             |                          |
| Parts of county:                          |                          |
| Wayne County Jail                         |                          |
| MINNESOTA                                 |                          |
| County Listing                            |                          |
| County name                               | Degree of shortage group |
| Hennepin:                                 |                          |
| American Indian population in Minneapolis | 01                       |
| Service area Listing                      |                          |
| Service area name                         | Degree of shortage group |
| American Indian population in Minneapolis | 01                       |
| County—Hennepin:                          |                          |
| Parts of county:                          |                          |
| American Indian population in Minneapolis |                          |
| MISSOURI                                  |                          |
| County Listing                            |                          |
| County name                               | Degree of shortage group |
| Bates                                     | 04                       |
| Bollinger                                 | 01                       |
| Carter                                    | 01                       |
| Cedar:                                    |                          |
| Service area, Humansville                 | 02                       |
| Chariton                                  | 04                       |
| Christian                                 | 02                       |
| Clark                                     | 01                       |
| Dallas                                    | 01                       |
| Davies                                    | 03                       |
| De Kalb                                   | 04                       |
| Douglas                                   | 02                       |
| Dunklin                                   | 02                       |
| Hickory:                                  |                          |
| Service area, Humansville                 | 02                       |
| Service area, Hickory                     | 01                       |
| Holt                                      | 02                       |
| Jackson:                                  |                          |
| Service area, Central Kansas city         | 02                       |
| Knox                                      | 03                       |
| Lewis                                     | 02                       |
| Lincoln                                   | 03                       |
| Linn                                      | 04                       |
| McDonald                                  | 04                       |
| Maries                                    | 02                       |
| Mississippi                               | 02                       |
| Oregon                                    | 01                       |
| Ozark                                     | 01                       |
| Pemiscot                                  | 03                       |
| Polk:                                     |                          |
| Service area, Humansville                 | 02                       |
| Pulaski                                   | 02                       |
| Putnam                                    | 04                       |
| Rails                                     | 01                       |
| Reynolds                                  | 01                       |
| Ripley                                    | 02                       |

| Missouri—Continued        |                          |
|---------------------------|--------------------------|
| County Listing            |                          |
| County name               | Degree of shortage group |
| St. Clair:                |                          |
| Service area, Humansville | 02                       |
| Service area, St. Clair   | 02                       |
| Schuyler                  | 01                       |
| Scotland                  | 04                       |
| Shannon                   | 01                       |
| Stoddard                  | 03                       |
| Stone                     | 03                       |
| Sullivan                  | 03                       |
| Texas                     | 02                       |
| Washington                | 01                       |
| Wright                    | 03                       |

| Service Area Listing   |                          |
|------------------------|--------------------------|
| Service area name      | Degree of shortage group |
| Central Kansas City    |                          |
| County—Jackson:        |                          |
| Parts of county:       |                          |
| C.T. 4-10              |                          |
| C.T. 15-26             |                          |
| C.T. 32, 33, 34        |                          |
| C.T. 35.01, 35.02      |                          |
| C.T. 36.01, 36.02      |                          |
| C.T. 37-42             |                          |
| C.T. 52-55             |                          |
| C.T. 56.01, 56.02      |                          |
| C.T. 57                |                          |
| C.T. 58.01, 58.02      |                          |
| C.T. 59.01             |                          |
| C.T. 60-64             |                          |
| C.T. 75, 76, 77        |                          |
| C.T. 78.01, 78.02      |                          |
| C.T. 79.80             |                          |
| Hickory                | 01                       |
| County—Hickory:        |                          |
| Parts of county:       |                          |
| Center Township        |                          |
| Cross Timbers Township |                          |
| Green Township         |                          |
| Jordan Township        |                          |
| Montgomery Township    |                          |
| Stark Township         |                          |
| Wheatland Township     |                          |
| Humansville            |                          |
| County—Cedar:          |                          |
| Jefferson Township     |                          |
| Washington Township    |                          |
| County—Hickory:        |                          |
| Parts of county:       |                          |
| Tyler Township         |                          |
| Weaubleau Township     |                          |
| County—Polk:           |                          |
| Parts of county:       |                          |
| Campbell Township      |                          |
| Clio Township          |                          |
| Flemington Township    |                          |
| Parts of county:       |                          |
| Jefferson Township     |                          |
| Johnson Township       |                          |
| County—St. Clair:      |                          |
| Parts of county:       |                          |
| Collins Township       |                          |
| Washington Township    |                          |
| St. Clair              | 02                       |
| County—St. Clair:      |                          |
| Parts of county:       |                          |
| Appleton Township      |                          |
| Butler Township        |                          |
| Center Township        |                          |
| Chalk Level Township   |                          |
| Dallas Township        |                          |
| Doyal Township         |                          |
| Jackson Township       |                          |
| Monegaw Township       |                          |
| Osage Township         |                          |
| Osola Township         |                          |
| Polk Township          |                          |
| Roscoe Township        |                          |
| Speedwell Township     |                          |
| Taber Township         |                          |

| Service Area Listing   |                          |
|------------------------|--------------------------|
| Service area name      | Degree of shortage group |
| Mullen                 | 01                       |
| County—Arthur          |                          |
| County—Cherry:         |                          |
| Parts of county:       |                          |
| Calf Creek Precinct    |                          |
| Elsmere Precinct       |                          |
| Gillaspie Precinct     |                          |
| Kennedy Precinct       |                          |
| Lackey Precinct        |                          |
| Loup Precinct          |                          |
| Mother Lake Precinct   |                          |
| Pleasant Hill Precinct |                          |
| Wells Precinct         |                          |
| County—Grant           |                          |
| County—Hooker          |                          |
| County—Logan:          |                          |
| Parts of county:       |                          |
| Burt Precinct          |                          |
| Cody Lake Precinct     |                          |
| Lone Valley Precinct   |                          |
| County—McPherson:      |                          |
| Parts of county:       |                          |
| Hall Precinct          |                          |

| Service Area Listing |                          |
|----------------------|--------------------------|
| Service area name    | Degree of shortage group |
| Mullen               | 01                       |

| MONTANA               |                          |
|-----------------------|--------------------------|
| County Listing        |                          |
| County name           | Degree of shortage group |
| Jefferson             | 03                       |
| Madison               | 04                       |
| Phillips              | 04                       |
| Rosebud:              |                          |
| Service area, Rosebud | 04                       |
| Treasure:             |                          |
| Service area, Rosebud | 04                       |

| Service Area Listing |                          |
|----------------------|--------------------------|
| Service area name    | Degree of shortage group |
| Rosebud              | 04                       |
| County—Rosebud       |                          |
| County—Treasure      |                          |

| NEBRASKA                      |                          |
|-------------------------------|--------------------------|
| County Listing                |                          |
| County name                   | Degree of shortage group |
| Arthur:                       |                          |
| Service area, Mullen          | 01                       |
| Cherry:                       |                          |
| Service area, Mullen          | 01                       |
| Douglas:                      |                          |
| Service area, Southeast Omaha | 01                       |
| Service area, Northeast Omaha | 04                       |
| Grant:                        |                          |
| Service area, Mullen          | 01                       |
| Hooker:                       |                          |
| Service area, Mullen          | 01                       |
| Logan:                        |                          |
| Service area, Mullen          | 01                       |
| McPherson:                    |                          |
| Service area, Mullen          | 01                       |
| Thomas:                       |                          |
| Service area, Mullen          | 01                       |

| Service Area Listing   |                          |
|------------------------|--------------------------|
| Service area name      | Degree of shortage group |
| Mullen                 | 01                       |
| County—Arthur          |                          |
| County—Cherry:         |                          |
| Parts of county:       |                          |
| Calf Creek Precinct    |                          |
| Elsmere Precinct       |                          |
| Gillaspie Precinct     |                          |
| Kennedy Precinct       |                          |
| Lackey Precinct        |                          |
| Loup Precinct          |                          |
| Mother Lake Precinct   |                          |
| Pleasant Hill Precinct |                          |
| Wells Precinct         |                          |
| County—Grant           |                          |
| County—Hooker          |                          |
| County—Logan:          |                          |
| Parts of county:       |                          |
| Burt Precinct          |                          |
| Cody Lake Precinct     |                          |
| Lone Valley Precinct   |                          |
| County—McPherson:      |                          |
| Parts of county:       |                          |
| Hall Precinct          |                          |

| Service Area Listing |                          |
|----------------------|--------------------------|
| Service area name    | Degree of shortage group |
| Mullen               | 01                       |

| NEBRASKA—Continued   |                          |
|----------------------|--------------------------|
| Service Area Listing |                          |
| Service area name    | Degree of shortage group |
| Whitewater Precinct  |                          |
| Worden Precinct      |                          |
| County—Thomas        |                          |
| Northeast Omaha      | 04                       |
| County—Douglas:      |                          |
| Parts of county:     |                          |
| C.T. 6               |                          |
| C.T. 7               |                          |
| C.T. 9               |                          |
| C.T. 10              |                          |
| C.T. 11              |                          |
| C.T. 12              |                          |
| C.T. 13.01           |                          |
| C.T. 13.02           |                          |
| C.T. 14              |                          |
| C.T. 15              |                          |
| C.T. 52              |                          |
| C.T. 60              |                          |
| Southeast Omaha      | 01                       |
| County—Douglas:      |                          |
| Parts of County:     |                          |
| C.T. 29              |                          |

| NEVADA                              |                          |
|-------------------------------------|--------------------------|
| County Listing                      |                          |
| County name                         | Degree of shortage group |
| Clark:                              |                          |
| Service area, Northeast Clark       | 01                       |
| Service area, South/Southwest Clark | 01                       |
| Service area, Western Clark         | 01                       |
| Esmeralda                           | 01                       |
| Eureka                              | 01                       |
| Lander                              | 01                       |
| Lyon                                | 03                       |
| Mineral                             | 02                       |
| Nye                                 | 01                       |
| Storey                              | 01                       |
| White Pine                          | 04                       |

| Service Area Listing       |                          |
|----------------------------|--------------------------|
| Service area name          | Degree of shortage group |
| Northeast Clark            | 01                       |
| County—Clark:              |                          |
| Parts of county:           |                          |
| C.T. 56                    |                          |
| C.T. 59 (East)             |                          |
| South/Southwest Clark      | 01                       |
| County—Clark:              |                          |
| Parts of county:           |                          |
| C.T. 57                    |                          |
| C.T. 58 (South)            |                          |
| Western Clark              | 01                       |
| County—Clark:              |                          |
| Parts of county:           |                          |
| C.T. 58 (Central/Northern) |                          |
| C.T. 59 (West)             |                          |

| NEW JERSEY                                                |                          |
|-----------------------------------------------------------|--------------------------|
| County Listing                                            |                          |
| County name                                               | Degree of shortage group |
| Mercer:                                                   |                          |
| Dentally indigent population of Henry Austin Service Area | 03                       |



## NOTICES

NEW JERSEY—Continued  
Service Area Listing

| Service area name         | Degree of shortage group |
|---------------------------|--------------------------|
| Henry Austin Service Area | 03                       |
| County—Mercer:            |                          |
| Parts of county:          |                          |
| C.T. 001                  |                          |
| C.T. 009                  |                          |
| C.T. 010                  |                          |
| C.T. 015                  |                          |
| C.T. 016                  |                          |
| C.T. 017                  |                          |
| C.T. 019                  |                          |
| C.T. 020                  |                          |
| C.T. 008 (Portion)        |                          |
| C.T. 011 (Portion)        |                          |
| C.T. 014 (Portion)        |                          |
| C.T. 018 (Portion)        |                          |
| C.T. 021 (Portion)        |                          |
| C.T. 022 (Portion)        |                          |

## NEW MEXICO

## County Listing

| County name                           | Degree of shortage group |
|---------------------------------------|--------------------------|
| Bernalillo:                           |                          |
| Service area, Los Padillos—Pajarito   | 01                       |
| Lincoln:                              |                          |
| Service area, Northern Lincoln County | 01                       |

## Service Area Listing

| Service area name       | Degree of shortage group |
|-------------------------|--------------------------|
| Los Padillos-Pajarito   | 01                       |
| County—Bernalillo:      |                          |
| Parts of county:        |                          |
| C.T. 46                 |                          |
| Northern Lincoln County | 01                       |
| County—Lincoln:         |                          |
| Parts of county:        |                          |
| Carrizozo               |                          |
| Capitan                 |                          |
| Corona                  |                          |

## NEW YORK

## County Listing

| County name                                             | Degree of shortage group |
|---------------------------------------------------------|--------------------------|
| Bronx:                                                  |                          |
| Service area, South Central Bronx-Port                  | 01                       |
| Apache                                                  |                          |
| Cattaraugus:                                            |                          |
| Service area, Northwest Cattaraugus                     | 01                       |
| Kings:                                                  |                          |
| Service area, Gowanus/Park Slope                        | 02                       |
| New York:                                               |                          |
| Service area, East Harlem                               | 03                       |
| Westchester:                                            |                          |
| Dentally Indigent Population of Mt. Vernon Service Area | 04                       |

## Service Area Listing

| Service area name           | Degree of shortage group |
|-----------------------------|--------------------------|
| Mt. Vernon                  | 04                       |
| County—Westchester:         |                          |
| Parts of county:            |                          |
| C.T. 25 (Dentally indigent) |                          |
| C.T. 27 (Dentally indigent) |                          |
| C.T. 28 (Dentally indigent) |                          |
| C.T. 29 (Dentally indigent) |                          |
| C.T. 31 (Dentally indigent) |                          |

NEW YORK—Continued  
Service Area Listing

| Service area name               | Degree of shortage group |
|---------------------------------|--------------------------|
| C.T. 32 (Dentally indigent)     |                          |
| C.T. 35 (Dentally indigent)     | 03                       |
| East Harlem                     |                          |
| County—New York:                |                          |
| Parts of county:                |                          |
| C.T. 178                        |                          |
| C.T. 180                        |                          |
| C.T. 182                        |                          |
| C.T. 184                        |                          |
| C.T. 188                        |                          |
| C.T. 192                        |                          |
| C.T. 194                        |                          |
| C.T. 196                        |                          |
| C.T. 198                        |                          |
| Gowanus/Park Slope              | 02                       |
| County—Kings:                   |                          |
| Parts of county:                |                          |
| C.T. 71                         |                          |
| C.T. 127                        |                          |
| C.T. 131                        |                          |
| C.T. 133                        |                          |
| Northwest Cattaraugus           | 01                       |
| County—Cattaraugus:             |                          |
| Parts of county:                |                          |
| Dayton                          |                          |
| Persia                          |                          |
| Otto                            |                          |
| East Otto                       |                          |
| Mansfield                       |                          |
| Leoni                           |                          |
| New Albion                      |                          |
| Conewango                       |                          |
| Napoli                          |                          |
| Little Valley                   |                          |
| South Central Bronx-Port Apache | 04                       |
| County—Bronx:                   |                          |
| Parts of county:                |                          |
| C.T. 121.01, 121.02             |                          |
| C.T. 123, 125                   |                          |
| C.T. 127.01                     |                          |
| C.T. 131                        |                          |
| C.T. 151.157                    |                          |
| C.T. 161                        |                          |

## NORTH CAROLINA

## County Listing

| County name                            | Degree of shortage group |
|----------------------------------------|--------------------------|
| Alexander                              | 03                       |
| Anson                                  | 01                       |
| Bladen                                 | 02                       |
| Brunswick                              | 01                       |
| Caldwell                               | 04                       |
| Columbus                               | 03                       |
| Cumberland                             | 03                       |
| Lincoln                                | 04                       |
| McDowell                               | 04                       |
| Macon                                  |                          |
| Mitchell:                              |                          |
| Service area, Northern Mitchell County | 01                       |
| Montgomery                             | 02                       |
| Pender                                 | 04                       |
| Richmond                               | 04                       |
| Robeson                                | 02                       |
| Sampson                                | 03                       |
| Scotland                               | 02                       |
| Union                                  | 03                       |
| Wilkes                                 |                          |

## Service Area Listing

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| Northern Mitchell County | 01                       |
| County—Mitchell:         |                          |
| Parts of county:         |                          |
| Bakersville              |                          |
| Cane Creek               |                          |
| Little Rock Creek        |                          |
| Fork Mountain            |                          |
| Red Hill                 |                          |

NORTH CAROLINA—Continued  
Service Area Listing

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| Harrell           |                          |
| Bradshaw          |                          |
| Poplar            |                          |
| Snow Creek        |                          |

## NORTH DAKOTA

## County Listing

| County name           | Degree of shortage group |
|-----------------------|--------------------------|
| Benson                | 03                       |
| Billings              | 01                       |
| Dunn                  | 01                       |
| Eddy                  | 04                       |
| Emmons                | 04                       |
| Kidder                | 03                       |
| McHenry               | 03                       |
| McKenzie              | 04                       |
| Mercer                | 03                       |
| Pierce:               |                          |
| Service area, Harvey  | 04                       |
| Sheridan:             |                          |
| Service area, Harvey  | 04                       |
| Sioux                 | 01                       |
| Ward:                 |                          |
| Service area, Kenmare | 01                       |
| Wells:                |                          |
| Service area, Harvey  | 04                       |

## Service Area Listing

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| Harvey                   | 04                       |
| County—Pierce:           |                          |
| Parts of county:         |                          |
| South Pierce Division    |                          |
| County—Sheridan:         |                          |
| Parts of county:         |                          |
| Sheridan                 |                          |
| County—Wells:            |                          |
| Parts of county:         |                          |
| Wells                    | 01                       |
| Kenmare                  |                          |
| County—Ward:             |                          |
| Parts of county:         |                          |
| Des Lacs Valley Division |                          |
| Kenmare Division         |                          |

## OHIO

## County Listing

| County name                                | Degree of shortage group |
|--------------------------------------------|--------------------------|
| Adams                                      | 01                       |
| Brown                                      | 03                       |
| Cuyahoga:                                  |                          |
| Service area, Glenville (Area I—Cleveland) | 02                       |
| Hamilton:                                  |                          |
| Service area, Winston Hills (Cincinnati)   | 02                       |
| Harrison                                   | 02                       |
| Haskell                                    | 03                       |
| Meigs                                      | 03                       |
| Monroe                                     |                          |
| Montgomery:                                |                          |
| Service area, Area I—Dayton                | 04                       |
| Service area, Area II—Dayton               | 01                       |
| Service area, Area III—Dayton              | 02                       |
| Morgan                                     | 02                       |
| Noble                                      | 04                       |
| Paulding                                   | 04                       |
| Perry                                      | 03                       |
| Ross:                                      |                          |
| Dentally indigent population               | 04                       |
| Vinton                                     | 01                       |

OHIO—Continued  
Service Area Listing

| Service area name               | Degree of shortage group |
|---------------------------------|--------------------------|
| Area I—Dayton                   | 04                       |
| County—Montgomery:              |                          |
| Parts of county:                |                          |
| C.T. 1                          |                          |
| C.T. 2                          |                          |
| C.T. 3                          |                          |
| C.T. 4                          |                          |
| C.T. 5                          |                          |
| C.T. 16                         |                          |
| C.T. 17                         |                          |
| C.T. 18                         |                          |
| C.T. 30                         |                          |
| C.T. 31                         |                          |
| Area II—Dayton                  | 01                       |
| County—Montgomery:              |                          |
| Parts of county:                |                          |
| C.T. 19                         |                          |
| C.T. 22                         |                          |
| C.T. 23                         |                          |
| C.T. 24                         |                          |
| C.T. 26                         |                          |
| C.T. 27                         |                          |
| C.T. 28                         |                          |
| C.T. 29                         |                          |
| C.T. 32                         |                          |
| C.T. 33                         |                          |
| C.T. 34                         |                          |
| Area III—Dayton                 | 02                       |
| County—Montgomery:              |                          |
| Parts of county:                |                          |
| C.T. 6                          |                          |
| C.T. 7                          |                          |
| C.T. 12                         |                          |
| C.T. 13                         |                          |
| C.T. 14                         |                          |
| C.T. 15                         |                          |
| C.T. 20                         |                          |
| C.T. 21                         |                          |
| Dentally indigent (Ross County) | 04                       |
| County—Ross:                    |                          |
| Glenville (Area I—Cleveland)    | 02                       |
| County—Cuyahoga:                |                          |
| Parts of county:                |                          |
| C.T. 1114                       |                          |
| C.T. 1116-1168                  |                          |
| C.T. 1181-1185                  |                          |
| Winston Hills (Cincinnati)      | 02                       |
| County—Hamilton:                |                          |
| Parts of county:                |                          |
| C.T. 73 (Winston Hills/Place)   |                          |
| C.T. 80 (Winston Hills/Place)   |                          |
| C.T. 257 (Elmwood Place)        |                          |

## OKLAHOMA

## County Listing

| County name | Degree of shortage group |
|-------------|--------------------------|
| Adair       | 01                       |
| Beaver      | 03                       |
| Choctaw     | 04                       |
| Coal        | 04                       |
| Cotton      | 04                       |
| Delaware    | 03                       |
| Dewey       | 01                       |
| Haskell     | 01                       |
| Hughes      | 04                       |
| Johnston    | 03                       |
| Kiowa       | 02                       |
| Latimer     | 03                       |
| Le Flore    | 03                       |
| McCurtain   | 04                       |
| Major       | 01                       |
| Okfuskee    | 01                       |
| Pushmataha  | 01                       |
| Roger Mills | 01                       |
| Seminole    | 04                       |

## OREGON

## County Listing

| County name                            | Degree of shortage group |
|----------------------------------------|--------------------------|
| Curry:                                 |                          |
| Service area, Northwest Curry          | 02                       |
| Deschutes:                             |                          |
| Service area, La Pine                  | 02                       |
| Gilliam:                               |                          |
| Service area, Tri-County               | 04                       |
| Josephine:                             |                          |
| Service area, Cave Junction            | 04                       |
| Klamath:                               |                          |
| Service area, La Pine                  | 02                       |
| Lake:                                  |                          |
| Service area, La Pine                  | 02                       |
| Marion:                                |                          |
| Migrant population                     | 01                       |
| Morrow:                                |                          |
| Service area, Tri-County               | 04                       |
| Multnomah:                             |                          |
| Service area, North/Northeast Portland | 04                       |
| Polk:                                  |                          |
| Migrant population                     | 01                       |
| Wheeler:                               |                          |
| Service area, Tri-County               | 04                       |
| Yamhill:                               |                          |
| Migrant population                     | 01                       |

## Service Area Listing

| Service area name                      | Degree of shortage group |
|----------------------------------------|--------------------------|
| Cave Junction                          | 04                       |
| County—Josephine:                      |                          |
| Parts of county:                       |                          |
| Cave Junction                          |                          |
| La Pine                                | 02                       |
| County—Deschutes:                      |                          |
| Parts of county:                       |                          |
| Sisters Mulligan CCD South of Sunriver |                          |
| County—Klamath:                        |                          |
| Parts of county:                       |                          |
| Crescent Lake CCD                      |                          |
| Chiloquin CCD                          |                          |
| County—Lake:                           |                          |
| Parts of county:                       |                          |
| Silver Lake-Ft. Rock CCD               |                          |
| Migrant Population                     | 01                       |
| County—Marion                          |                          |
| County—Polk                            |                          |
| County—Yamhill                         |                          |
| Northwest Curry:                       |                          |
| Parts of county:                       |                          |
| Port Orford CCD                        |                          |
| Gold Beach CCD                         |                          |
| Agness CCD                             |                          |
| North/Northeast Portland               | 04                       |
| County—Multnomah:                      |                          |
| Parts of county:                       |                          |
| C.T. 33.01                             |                          |
| C.T. 33.02                             |                          |
| C.T. 34.01                             |                          |
| C.T. 34.02                             |                          |
| C.T. 35.01                             |                          |
| C.T. 35.02                             |                          |
| C.T. 36.01                             |                          |
| C.T. 36.02                             |                          |
| C.T. 37.01                             |                          |
| C.T. 37.02                             |                          |
| C.T. 38.01                             |                          |
| C.T. 38.02                             |                          |
| C.T. 38.03                             |                          |
| C.T. 39.01                             |                          |
| C.T. 39.02                             |                          |
| C.T. 40.01                             |                          |
| C.T. 40.02                             |                          |
| Tri-County                             | 04                       |
| County—Gilliam                         |                          |
| County—Morrow                          |                          |
| County—Wheeler                         |                          |

## PENNSYLVANIA

## County Listing

| County name                         | Degree of shortage group |
|-------------------------------------|--------------------------|
| Adams:                              |                          |
| Service area, North Adams           | 02                       |
| Allegheny:                          |                          |
| Service area, Homewood-Brushton     | 01                       |
| Armstrong:                          |                          |
| Service area, Armstrong-Clarion     | 03                       |
| Service area, Kiski Valley          | 03                       |
| Bedford:                            |                          |
| Service area, Hyndman               | 01                       |
| Carbon:                             |                          |
| Service area, Jim Thorpe            | 01                       |
| Clarion:                            |                          |
| Service area, Armstrong-Clarion     | 03                       |
| Service area, Forest                | 02                       |
| Crawford:                           |                          |
| Service area, East Crawford County  | 01                       |
| Dauphin:                            |                          |
| Service area, Tri-Town service area | 04                       |
| Delaware:                           |                          |
| Service area, City of Chester       | 02                       |
| Fayette:                            |                          |
| Service area, Greensboro            | 02                       |
| Forest:                             |                          |
| Service area, Forest                | 02                       |
| Franklin:                           |                          |
| Service area, Valleys Community     | 01                       |
| Fulton:                             |                          |
| Greene:                             |                          |
| Service area, Greensboro            | 02                       |
| Service area, West Greene           | 01                       |
| Huntingdon                          | 01                       |
| Indiana:                            |                          |
| Service area, Indiana—N Portion     | 02                       |
| Lancaster:                          |                          |
| Service area, Welsh Mountain        | 02                       |
| Perry                               | 01                       |
| Philadelphia:                       |                          |
| Service area, North Philadelphia    | 01                       |
| Schuylkill:                         |                          |
| Service area, Tri-Town service area | 04                       |
| Somerset:                           |                          |
| Service area, Hyndman               | 01                       |
| Sullivan                            | 01                       |
| Venango:                            |                          |
| Service area, Forest                | 02                       |
| Warren:                             |                          |
| Service area, Forest                | 02                       |
| Westmoreland:                       |                          |
| Service area, Kiski Valley          | 03                       |
| Wyoming:                            |                          |
| Service area, Southern Wyoming      | 01                       |
| County                              | 01                       |
| Service area, York City             | 04                       |

## Service Area Listing

| Service area name     | Degree of shortage group |
|-----------------------|--------------------------|
| Armstrong—Clarion     | 03                       |
| County—Armstrong:     |                          |
| Parts of county:      |                          |
| Brady's Bend Township |                          |
| Madison Township      |                          |
| Perry Township        |                          |
| Pine Township         |                          |
| Sugarcreek Township   |                          |
| Washington Township   |                          |
| County—Clarion:       |                          |
| Parts of county:      |                          |
| Brady Township        |                          |
| East Brady Township   |                          |
| Madison Township      |                          |
| City of Chester       | 01                       |
| County—Delaware:      |                          |
| Parts of county:      |                          |
| C.T. 4048             |                          |
| C.T. 4049.01          |                          |
| C.T. 4049.02          |                          |
| C.T. 4050             |                          |
| C.T. 4051             |                          |
| C.T. 4052             |                          |
| C.T. 4053             |                          |



## PENNSYLVANIA—Continued

| Service area name       | Degree of shortage group |
|-------------------------|--------------------------|
| C.T. 4054               |                          |
| C.T. 4055               |                          |
| C.T. 4056               |                          |
| C.T. 4057               |                          |
| C.T. 4058.01            |                          |
| C.T. 4058.02            |                          |
| C.T. 4059               |                          |
| C.T. 4060               |                          |
| East Crawford County    | 01                       |
| County—Crawford:        |                          |
| Parts of county:        |                          |
| Athens Township         |                          |
| Bloomfield Township     |                          |
| Centerville Township    |                          |
| Richmond Township       |                          |
| Rockdale Township       |                          |
| Rome Township           |                          |
| Sparta Township         |                          |
| Spartanburg Township    |                          |
| Steuben Township        |                          |
| Townville Borough       |                          |
| Forest                  | 02                       |
| County—Clarion          |                          |
| Parts of county:        |                          |
| Washington Township     |                          |
| Farmington Township     |                          |
| County—Forest           |                          |
| County—Venango          |                          |
| Parts of county:        |                          |
| Pleasantville Township  |                          |
| Allegheny Township      |                          |
| President Township      |                          |
| County—Warren           |                          |
| Parts of county:        |                          |
| Triumph Township        |                          |
| Limestone Township      |                          |
| Watson Township         |                          |
| Deerfield Township      |                          |
| Cherry Grove Township   |                          |
| South West Township     |                          |
| Greensboro              | 02                       |
| County—Fayette:         |                          |
| Parts of county:        |                          |
| Point Marion Borough    |                          |
| German Township         |                          |
| Nicholson Township      |                          |
| Springhill Township     |                          |
| County—Greene:          |                          |
| Parts of county:        |                          |
| Dunkard Township        |                          |
| Greene Township         |                          |
| Monongahela Township    |                          |
| Greensboro Borough      |                          |
| Homerwood-Brushton      | 01                       |
| County—Allegheny:       |                          |
| Parts of county:        |                          |
| C.T. 1207               |                          |
| C.T. 1301               |                          |
| C.T. 1302               |                          |
| C.T. 1303               |                          |
| C.T. 1304               |                          |
| C.T. 1305               |                          |
| Hyndman                 | 01                       |
| County—Bedford:         |                          |
| Parts of county:        |                          |
| Harrison Township       |                          |
| Hyndman Borough         |                          |
| Juniata Township        |                          |
| Londonderry Township    |                          |
| County—Somerset:        |                          |
| Parts of county:        |                          |
| Allegheny Township      |                          |
| Fairhope Township       |                          |
| Indiana—N Portion       | 02                       |
| County—Indiana:         |                          |
| Parts of county:        |                          |
| West Mahoning Township  |                          |
| North Mahoning Township |                          |
| South Mahoning Township |                          |
| East Mahoning Township  |                          |
| Canoe Township          |                          |
| Banks Township          |                          |
| Grant Township          |                          |
| Montgomery Township     |                          |
| Washington Township     |                          |
| Rayne Township          |                          |
| Green Township          |                          |
| Pine Township           |                          |
| Glen Campbell Borough   |                          |
| Smicksburg Borough      |                          |
| Cherry Tree Borough     |                          |

## PENNSYLVANIA—Continued

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| Marion Center Borough    |                          |
| Plumville Borough        |                          |
| Creekside Borough        |                          |
| Clymer                   |                          |
| Jim Thorpe               | 01                       |
| County—Carbon:           |                          |
| Parts of county:         |                          |
| Kidder Township          |                          |
| Penn Forest Township     |                          |
| Jim Thorpe Borough       |                          |
| East Side Borough        |                          |
| Lausanne Township        |                          |
| Lehigh Township          |                          |
| Kiski Valley             | 03                       |
| County—Armstrong:        |                          |
| Parts of county:         |                          |
| Apollo Borough           |                          |
| Bethel Township          |                          |
| Burrel Township          |                          |
| Gilpin Township          |                          |
| Kiskiminitas Township    |                          |
| Leechburg Borough        |                          |
| North Apollo Borough     |                          |
| Parks Township           |                          |
| South Bend Township      |                          |
| County—Westmoreland:     |                          |
| Parts of county:         |                          |
| Oklahoma Borough         |                          |
| Allegheny Township       |                          |
| Avonmore Borough         |                          |
| Bell Township            |                          |
| East Vandergrift Borough |                          |
| Hyde Park Borough        |                          |
| Vandergrift Borough      |                          |
| Washington Township      |                          |
| West Leechburg Borough   |                          |
| North Adams              | 02                       |
| County—Adams:            |                          |
| Parts of county:         |                          |
| Menallen Township        |                          |
| Tyrone Township          |                          |
| Huntington Township      |                          |
| Butler Township          |                          |
| Arendtsville Borough     |                          |
| Bendersville Borough     |                          |
| Biglerville Borough      |                          |
| York Springs Borough     |                          |
| North Philadelphia       | 01                       |
| County—Philadelphia:     |                          |
| Parts of county:         |                          |
| C.T. 137                 |                          |
| C.T. 138                 |                          |
| C.T. 139                 |                          |
| C.T. 140                 |                          |
| C.T. 147                 |                          |
| C.T. 148                 |                          |
| C.T. 149                 |                          |
| C.T. 151                 |                          |
| C.T. 152                 |                          |
| C.T. 153                 |                          |
| C.T. 167                 |                          |
| C.T. 168                 |                          |
| C.T. 169                 |                          |
| C.T. 171                 |                          |
| C.T. 172                 |                          |
| Southern Wyoming County  | 01                       |
| County—Wyoming:          |                          |
| Parts of county:         |                          |
| Exeter Township          |                          |
| Faus Township            |                          |
| Monroe Township          |                          |
| Northmoreland Township   |                          |
| Noxen Township           |                          |
| Tri-Town Service Area    | 04                       |
| County—Dauphin:          |                          |
| Parts of county:         |                          |
| Lykens Borough           |                          |
| Williamstown Borough     |                          |
| Gratz Borough            |                          |
| Wisconsin Township       |                          |
| County—Schuylkill:       |                          |
| Parts of county:         |                          |
| Tower City Borough       |                          |
| Fralley Township         |                          |
| Valleys Community        | 01                       |
| County—Franklin:         |                          |
| Parts of county:         |                          |
| Fannet Township          |                          |
| Metal Township           |                          |
| Welsh Mountain           | 02                       |
| County—Lancaster:        |                          |

## PENNSYLVANIA—Continued

| Service area name   | Degree of shortage group |
|---------------------|--------------------------|
| Parts of county:    |                          |
| Salisbury Township  |                          |
| Caernarvon Township |                          |
| Earl Township       |                          |
| East Earl Township  |                          |
| West Greene         | 01                       |
| County—Greene:      |                          |
| Parts of county:    |                          |
| Alleppo Township    |                          |
| Gilmore Township    |                          |
| Gray Township       |                          |
| Jackson Township    |                          |
| Richhill Township   |                          |
| Springhill Township |                          |
| Center Township     |                          |
| Freeport Township   |                          |
| Morris Township     |                          |
| Washington Township |                          |
| Wayne Township      |                          |
| York City           | 04                       |
| County—York:        |                          |
| Parts of county:    |                          |
| C.T. 1              |                          |
| C.T. 2              |                          |
| C.T. 3              |                          |
| C.T. 5              |                          |
| C.T. 7              |                          |
| C.T. 10             |                          |
| C.T. 15             |                          |
| C.T. 16             |                          |

## SOUTH CAROLINA

## County Listing

| County name | Degree of shortage group |
|-------------|--------------------------|
| Abbeville   | 04                       |
| Allendale   | 01                       |
| Bamberg     | 02                       |
| Berkeley    | 03                       |
| Calhoun     | 01                       |
| Cherokee    | 04                       |
| Chester     | 02                       |
| Colleton    | 02                       |
| Lancaster   | 02                       |
| McCormick   | 02                       |
| Richland    | 01                       |
| Saluda      | 03                       |
| Union       | 04                       |

## Service Area Listing

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| Richland          | 01                       |
| County—Richland:  |                          |
| Parts of county:  |                          |
| C.T. 118          |                          |
| C.T. 119.02       |                          |
| C.T. 120          |                          |

## SOUTH DAKOTA

## County Listing

| County name | Degree of shortage group |
|-------------|--------------------------|
| Buffalo     | 01                       |
| Campbell    | 01                       |
| Charles Mix | 04                       |
| Corson      | 01                       |
| Deuel       | 01                       |
| Dewey       | 01                       |
| Edmunds     | 01                       |
| Faulk       | 01                       |
| Gregory     | 01                       |
| Haakon      | 01                       |

## SOUTH DAKOTA—Continued

## County Listing

| County name                         | Degree of shortage group |
|-------------------------------------|--------------------------|
| Hanson                              | 01                       |
| Harding                             | 01                       |
| Jackson                             | 01                       |
| Lyman                               | 01                       |
| McCook                              | 01                       |
| Marshall                            | 01                       |
| Meade:                              |                          |
| Service area, Faith                 | 01                       |
| Mellette                            | 01                       |
| Moody                               | 03                       |
| Perkins:                            |                          |
| Service area, Faith                 | 01                       |
| Roberts                             | 02                       |
| Sanborn                             | 01                       |
| Shannon                             | 01                       |
| Sully                               | 01                       |
| Todd                                | 01                       |
| Washabaugh                          | 01                       |
| Yankton:                            |                          |
| Service area, Human Services Center | 01                       |
| Ziebach                             | 01                       |

## Service Area Listing

| Service area name                        | Degree of shortage group |
|------------------------------------------|--------------------------|
| Faith                                    | 01                       |
| County—Meade:                            |                          |
| Parts of county:                         |                          |
| Eagle Township                           |                          |
| Faith City                               |                          |
| Unorganized Territory of Northern Meade  |                          |
| County—Perkins:                          |                          |
| Parts of county:                         |                          |
| Ada Township                             |                          |
| Antelope Township                        |                          |
| Beck Township                            |                          |
| Chance Township                          |                          |
| Chadron Township                         |                          |
| Duell Township                           |                          |
| Englewood Township                       |                          |
| Flint Rock Township                      |                          |
| Foster Township                          |                          |
| Hall Township                            |                          |
| Highland Township                        |                          |
| Lone Tree Township                       |                          |
| Maltby Township                          |                          |
| Martin Township                          |                          |
| Moreau Township                          |                          |
| Vickers Township                         |                          |
| Vrooman Township                         |                          |
| Wyandotte Township                       |                          |
| Unorganized Territory of Deep Creek      |                          |
| Unorganized Territory of East Perkins    |                          |
| Unorganized Territory of South Perkins   |                          |
| Unorganized Territory of S.W. Perkins    |                          |
| Unorganized Territory of W.C. Perkins    |                          |
| Unorganized Territory of Western Perkins |                          |
| Human Services Center                    | 03                       |
| County—Yankton:                          |                          |
| Parts of county:                         |                          |
| Human Services Center                    |                          |

## TENNESSEE

## County Listing

| County name | Degree of shortage group |
|-------------|--------------------------|
| Anderson    | 01                       |
| Henry       | 01                       |

## TENNESSEE—Continued

## County Listing

| County name | Degree of shortage group |
|-------------|--------------------------|
| Johnson     | 02                       |
| Lewis       | 04                       |
| Perry       | 03                       |
| Pickett     | 01                       |
| Wayne       | 03                       |

## TEXAS

## County Listing

| County name                                         | Degree of shortage group |
|-----------------------------------------------------|--------------------------|
| Bandera                                             | 03                       |
| Bexar:                                              |                          |
| Service area, East Side (San Antonio)               | 03                       |
| Service area, West Side (San Antonio)               | 02                       |
| Service area, South Side (San Antonio)              | 02                       |
| Service area, Southern Rural Bexar                  | 01                       |
| Cameron                                             | 03                       |
| Cochran                                             | 04                       |
| Dallas:                                             |                          |
| Service area, Trinity                               | 02                       |
| Service area, Fair Park/White Rock Creek Industrial | 01                       |
| Service area, South Dallas                          | 01                       |
| Service area, Lisbon                                | 03                       |
| Dimmit                                              | 01                       |
| Duval                                               | 01                       |
| Edwards                                             | 01                       |
| Frio                                                | 01                       |
| Hardin                                              | 04                       |
| Karnes                                              | 04                       |
| Kinney                                              | 01                       |
| La Salle                                            | 03                       |
| Live Oak:                                           |                          |
| Service area, McMullen/Live Oak                     | 02                       |
| McMullen:                                           |                          |
| Service area, McMullen/Live Oak                     | 02                       |
| Maverick                                            | 01                       |
| Newton                                              | 04                       |
| Polk                                                | 02                       |
| San Jacinto                                         | 01                       |
| Shelby                                              | 03                       |
| Trinity                                             | 02                       |
| Uvalde                                              | 03                       |
| Val Verde                                           | 03                       |
| Walker                                              | 04                       |
| Webb                                                | 02                       |
| Zapala                                              | 01                       |
| Zavala                                              | 01                       |

## Service Area Listing

| Service area name                     | Degree of shortage group |
|---------------------------------------|--------------------------|
| East Side (San Antonio)               | 03                       |
| County—Bexar:                         |                          |
| Parts of county:                      |                          |
| C.T. 1301                             |                          |
| C.T. 1303                             |                          |
| C.T. 1304                             |                          |
| C.T. 1305                             |                          |
| C.T. 1306                             |                          |
| C.T. 1307                             |                          |
| C.T. 1308                             |                          |
| C.T. 1309                             |                          |
| C.T. 1310                             |                          |
| C.T. 1311                             |                          |
| C.T. 1312                             |                          |
| C.T. 1313                             |                          |
| Fair Park/White Rock Creek Industrial | 01                       |
| County—Dallas:                        |                          |
| Parts of county:                      |                          |
| C.T. 23                               |                          |
| C.T. 25                               |                          |
| C.T. 26                               |                          |
| C.T. 27.01                            |                          |
| C.T. 27.02                            |                          |

## TEXAS—Continued

| Service area name        | Degree of shortage group |
|--------------------------|--------------------------|
| C.T. 28                  |                          |
| C.T. 93.02               |                          |
| C.T. 115                 |                          |
| Lisbon                   | 03                       |
| County—Dallas:           |                          |
| Parts of county:         |                          |
| C.T. 56                  |                          |
| C.T. 57                  |                          |
| C.T. 59.01, 59.02        |                          |
| C.T. 87.01, 87.02        |                          |
| C.T. 88                  |                          |
| McMullen/Live Oak        | 02                       |
| County—Live Oak          |                          |
| County—McMullen          |                          |
| South Dallas             | 01                       |
| County—Dallas:           |                          |
| Parts of county:         |                          |
| C.T. 29                  |                          |
| C.T. 30                  |                          |
| C.T. 31.02               |                          |
| C.T. 32.02               |                          |
| C.T. 33                  |                          |
| C.T. 34                  |                          |
| C.T. 35                  |                          |
| C.T. 36                  |                          |
| C.T. 37                  |                          |
| C.T. 38                  |                          |
| C.T. 39.01               |                          |
| C.T. 39.02               |                          |
| C.T. 40                  |                          |
| South Side (San Antonio) | 02                       |
| County—Bexar:            |                          |
| Parts of county:         |                          |
| C.T. 1501                |                          |
| C.T. 1503                |                          |
| C.T. 1504                |                          |
| C.T. 1505                |                          |
| C.T. 1506                |                          |
| C.T. 1507                |                          |
| C.T. 1510                |                          |
| C.T. 1601                |                          |
| C.T. 1602                |                          |
| C.T. 1603                |                          |
| C.T. 1604                |                          |
| C.T. 1605                |                          |
| Southern Rural Bexar     | 01                       |
| County—Bexar:            |                          |
| Parts of county:         |                          |
| C.T. 1314                |                          |
| C.T. 1315                |                          |
| C.T. 1316                |                          |
| C.T. 1318                |                          |
| C.T. 1416                |                          |
| C.T. 1417                |                          |
| C.T. 1418                |                          |
| C.T. 1419                |                          |
| C.T. 1519                |                          |
| C.T. 1520                |                          |
| C.T. 1521                |                          |
| C.T. 1522                |                          |
| C.T. 1610                |                          |
| C.T. 1611                |                          |
| C.T. 1612                |                          |
| C.T. 1619                |                          |
| C.T. 1620                |                          |
| Trinity                  | 02                       |
| County—Dallas:           |                          |
| Parts of county:         |                          |
| C.T. 41                  |                          |
| C.T. 49                  |                          |
| C.T. 54                  |                          |
| C.T. 55                  |                          |
| C.T. 86                  |                          |
| C.T. 89                  |                          |
| West Side (San Antonio)  | 02                       |
| County—Bexar:            |                          |
| Parts of county:         |                          |
| C.T. 1606                |                          |
| C.T. 1607                |                          |
| C.T. 1701                |                          |
| C.T. 1703                |                          |
| C.T. 1704                |                          |
| C.T. 1707                |                          |
| C.T. 1708                |                          |
| C.T. 1709                |                          |
| C.T. 1710                |                          |
| C.T. 1711                |                          |
| C.T. 1712                |                          |
| C.T. 1715                |                          |
| C.T. 1716                |                          |



## NOTICES

UTAH  
County Listing

| County name  | Degree of shortage group |
|--------------|--------------------------|
| Daggett..... | 01                       |
| Piute.....   | 01                       |
| Rich.....    | 01                       |
| Wayne.....   | 01                       |

VERMONT  
County Listing

| County name                   | Degree of shortage group |
|-------------------------------|--------------------------|
| Addison.....                  | 02                       |
| Essex.....                    | 04                       |
| Grand Isle.....               | 01                       |
| Washington.....               | 01                       |
| Service area, Plainfield..... | 01                       |

## Service area Listing

| Service area name    | Degree of shortage group |
|----------------------|--------------------------|
| Addison.....         | 02                       |
| County—Addison:      |                          |
| Parts of county:     |                          |
| Addison              |                          |
| Bridport             |                          |
| Bristol              |                          |
| Ferrisburg           |                          |
| Lincoln              |                          |
| Monkton              |                          |
| New Haven            |                          |
| Orwell               |                          |
| Panton               |                          |
| Rhodesham            |                          |
| Waltham              |                          |
| Starksboro           |                          |
| Plainfield.....      | 01                       |
| County—Washington:   |                          |
| Parts of county:     |                          |
| Woodbury Town        |                          |
| Cabot Town           |                          |
| Calla Town           |                          |
| Marshfield Town      |                          |
| East Montpelier Town |                          |
| Plainfield Town      |                          |

VIRGINIA  
County Listing

| County name                 | Degree of shortage group |
|-----------------------------|--------------------------|
| Accomack.....               | 04                       |
| Amelia.....                 | 02                       |
| Bath.....                   | 02                       |
| Brunswick.....              | 02                       |
| Charlotte.....              | 01                       |
| Fluvanna.....               | 01                       |
| Greene.....                 | 01                       |
| King George.....            | 03                       |
| Lee.....                    | 01                       |
| Louisa.....                 | 01                       |
| Lunenburg.....              | 02                       |
| Madison.....                | 03                       |
| Mathews.....                | 02                       |
| Orange.....                 | 04                       |
| Rappahannock.....           | 01                       |
| Richmond:                   |                          |
| Service area, Randolph..... | 01                       |
| Russell.....                | 01                       |
| Southampton.....            | 01                       |
| Surry.....                  | 01                       |
| Sussex.....                 | 01                       |

VIRGINIA—Continued  
County Listing

| County name   | Degree of shortage group |
|---------------|--------------------------|
| Tazewell..... | 04                       |
| Wise.....     | 03                       |

## Service Area Listing

| Service area name | Degree of shortage group |
|-------------------|--------------------------|
| Randolph.....     |                          |
| County—Richmond:  |                          |
| Parts of county:  |                          |
| C.T. 411          |                          |
| C.T. 413          |                          |
| C.T. 414          |                          |

WASHINGTON  
County Listing

| County name                        | Degree of shortage group |
|------------------------------------|--------------------------|
| Adams:                             |                          |
| Migrant Population.....            | 02                       |
| Grant:                             |                          |
| Migrant Population.....            | 02                       |
| King:                              |                          |
| Seattle and King County Jails..... | 02                       |
| Pend Oreille.....                  | 04                       |
| Snobobish:                         |                          |
| Tulalip Tribe.....                 | 04                       |

## Service Area Listing

| Service area name                  | Degree of shortage group |
|------------------------------------|--------------------------|
| Migrant Population.....            | 02                       |
| County—Adams:                      |                          |
| County—Grant:                      |                          |
| Seattle and King County Jails..... | 02                       |
| County—King:                       |                          |
| Parts of county:                   |                          |
| Seattle and King County Jails      |                          |
| Tulalip Tribe                      |                          |
| County—Snobobish                   |                          |

WEST VIRGINIA  
County Listings

| County name                     | Degree of shortage group |
|---------------------------------|--------------------------|
| Barbour.....                    | 02                       |
| Boone.....                      | 03                       |
| Calhoun.....                    | 01                       |
| Doddridge.....                  | 03                       |
| Fayette:                        |                          |
| Service area, Fayetteville..... | 02                       |
| Gilmer.....                     | 04                       |
| Grant:                          |                          |
| Service area, Mount Storm.....  | 01                       |
| Greenbrier:                     |                          |
| Service area, Greenbrier.....   | 02                       |
| Hampshire:                      |                          |
| Service area, Capon Bridge..... | 01                       |
| Kanawha:                        |                          |
| Service area, St. Albans.....   | 04                       |
| Lincoln.....                    | 01                       |
| Logan.....                      | 03                       |
| McDowell.....                   | 01                       |
| Marshall:                       |                          |
| Service area, Wetzel.....       | 01                       |

WEST VIRGINIA—Continued  
County Listings

| County name                                  | Degree of shortage group |
|----------------------------------------------|--------------------------|
| Mason County:                                |                          |
| Service area, Mason County Service Area..... | 01                       |
| Mercer:                                      |                          |
| Service area, Mercer.....                    | 01                       |
| Mineral:                                     |                          |
| Service area, Cabin Run.....                 | 02                       |
| Mingo:                                       |                          |
| Service area, Mingo.....                     | 01                       |
| Monongalia:                                  |                          |
| Service area, Blacksville.....               | 01                       |
| Monroe:                                      |                          |
| Nicholas:                                    |                          |
| Service area, Nicholas-Webster.....          | 03                       |
| Pleasants:                                   |                          |
| Service area, Jefferson.....                 | 01                       |
| Preston.....                                 | 02                       |
| Putnam.....                                  | 02                       |
| Ritchie.....                                 | 04                       |
| Summers.....                                 | 03                       |
| Taylor.....                                  | 03                       |
| Tucker:                                      |                          |
| Service area, Tyler.....                     | 01                       |
| Wayne.....                                   | 02                       |
| Webster:                                     |                          |
| Service area, Nicholas-Webster.....          | 03                       |
| Wetzel:                                      |                          |
| Service area, Wetzel.....                    | 01                       |
| Wirt.....                                    | 01                       |
| Wyoming.....                                 | 03                       |

## Service Area Listing

| Service area name              | Degree of shortage group |
|--------------------------------|--------------------------|
| Blacksville.....               | 01                       |
| County—Monongalia:             |                          |
| Parts of county:               |                          |
| Clay                           |                          |
| Battle                         |                          |
| Cabin Run.....                 | 03                       |
| County—Mineral:                |                          |
| Parts of county:               |                          |
| Frankfurt                      |                          |
| Cabin Run                      |                          |
| Capon Bridge.....              | 01                       |
| County—Hampshire:              |                          |
| Parts of county:               |                          |
| Bloomery                       |                          |
| Capon                          |                          |
| Ehman                          |                          |
| Gore.....                      | 02                       |
| Fayetteville:                  |                          |
| County—Fayette:                |                          |
| Parts of county:               |                          |
| Fayetteville                   |                          |
| Falls                          |                          |
| Quinnimont                     |                          |
| Sewell Mountain                |                          |
| Nuttall                        |                          |
| Mountain Cove.....             | 02                       |
| Greenbrier:                    |                          |
| County—Greenbrier:             |                          |
| Parts of county:               |                          |
| Meadow Bluff                   |                          |
| Jefferson.....                 | 01                       |
| County—Pleasants:              |                          |
| Parts of county:               |                          |
| Grant                          |                          |
| Jefferson                      |                          |
| LaFayette                      |                          |
| McKim                          |                          |
| Union.....                     | 01                       |
| Mason County Service Area..... | 01                       |
| County—Mason County:           |                          |
| Parts of county:               |                          |
| Arbuckle District              |                          |
| Clendenin District             |                          |
| Cologne District               |                          |
| Cooper District                |                          |

## WEST VIRGINIA—Continued

| Service area name     | Degree of shortage group |
|-----------------------|--------------------------|
| Graham District       |                          |
| Hannan District       |                          |
| Hubbison District     |                          |
| Union District        |                          |
| Waggener District     |                          |
| Mercer.....           | 01                       |
| County—Mercer:        |                          |
| Parts of county:      |                          |
| Ruck                  |                          |
| Jumping Branch        |                          |
| Plymouth              |                          |
| Mingo.....            | 01                       |
| County—Mingo:         |                          |
| Parts of county:      |                          |
| Hainey                |                          |
| Hardie                |                          |
| Kermil                |                          |
| Lee                   |                          |
| Magnolia              |                          |
| Mt. Storm.....        | 01                       |
| County—Grant:         |                          |
| Parts of county:      |                          |
| Union                 |                          |
| Nicholas-Webster..... | 03                       |
| County—Nicholas:      |                          |
| County—Webster        |                          |
| St. Albans.....       | 04                       |
| County—Kanawha:       |                          |
| Parts of county:      |                          |
| Big Sandy             |                          |
| Cabin Creek           |                          |
| Elk                   |                          |
| St. Albans City       |                          |
| Chesapeake Town       |                          |
| Malden                |                          |
| Union                 |                          |
| Washington            |                          |
| Marmet Town           |                          |
| Tyler.....            | 01                       |
| County—Tyler:         |                          |
| Parts of county:      |                          |
| Centerville           |                          |
| Ellsworth             |                          |
| McElroy               |                          |
| Meade                 |                          |
| Union.....            | 01                       |
| Wetzel.....           | 01                       |
| County—Marshall:      |                          |
| Parts of county:      |                          |
| Liberty District      |                          |
| Meade District        |                          |
| Cameron District      |                          |
| Webster District      |                          |
| County—Wetzel:        |                          |
| Parts of county:      |                          |
| Clay District         |                          |
| Church District       |                          |
| Center District       |                          |

WISCONSIN  
County Listing

| County name                                                           | Degree of shortage group |
|-----------------------------------------------------------------------|--------------------------|
| Adams.....                                                            | 04                       |
| Buffalo:                                                              |                          |
| Service area, Whitehall/Arcadia.....                                  | 01                       |
| Crawford:                                                             |                          |
| Service area, Kickapoo Valley.....                                    | 01                       |
| Florence.....                                                         | 01                       |
| Forest:                                                               |                          |
| Service area, Iron County area—See Michigan Service area Listing..... | 04                       |
| Service area, Mountain.....                                           | 01                       |
| Iron.....                                                             | 02                       |
| Jackson.....                                                          | 02                       |
| Juneau:                                                               |                          |
| Service area, Hillsboro area.....                                     | 02                       |
| Langlade:                                                             |                          |
| Service area, Mountain.....                                           | 01                       |
| Marathon:                                                             |                          |
| Service area, Athens.....                                             | 02                       |
| Milwaukee:                                                            |                          |
| Service area, Inner City North (Milwaukee).....                       | 01                       |
| Monroe:                                                               |                          |
| Service area, Hillsboro area.....                                     | 03                       |

## WISCONSIN—Continued

## County Listing

| County name                                                            | Degree of shortage group |
|------------------------------------------------------------------------|--------------------------|
| Oconto:                                                                |                          |
| Service area, Mountain.....                                            | 01                       |
| Richland:                                                              |                          |
| Service area, Kickapoo Valley.....                                     | 01                       |
| Service area, Hillsboro area.....                                      | 02                       |
| Sauk:                                                                  |                          |
| Service area, Hillsboro area.....                                      | 02                       |
| Trempealeau:                                                           |                          |
| Service area, Whitehall/Arcadia.....                                   | 01                       |
| Vernon:                                                                |                          |
| Service area, Kickapoo Valley.....                                     | 01                       |
| Service area, Hillsboro area.....                                      | 02                       |
| Vilas:                                                                 |                          |
| Service area, Iron County Area—See Michigan Service, Area Listing..... | 04                       |

## Service Area Listing

| Service area name                 | Degree of shortage group |
|-----------------------------------|--------------------------|
| Athens.....                       | 02                       |
| County—Marathon:                  |                          |
| Parts of county:                  |                          |
| Athens City                       |                          |
| Bein Township                     |                          |
| Halsey Township                   |                          |
| Hamburg Township                  |                          |
| Johnson Township                  |                          |
| Rietbrock Township                |                          |
| Hillsboro, Area.....              | 02                       |
| County—Juneau:                    |                          |
| Parts of county:                  |                          |
| Wonewoc (Village)                 |                          |
| Wonewoc Township                  |                          |
| County—Monroe:                    |                          |
| Parts of county:                  |                          |
| Cashon                            |                          |
| Jefferson                         |                          |
| Kendall (Village)                 |                          |
| Sheldon                           |                          |
| Wellington                        |                          |
| Glendale                          |                          |
| County—Richland:                  |                          |
| Parts of county:                  |                          |
| Yuba (Village)                    |                          |
| Henrietta                         |                          |
| Westford                          |                          |
| Bloom Town (Part)                 |                          |
| County—Sauk:                      |                          |
| Parts of county:                  |                          |
| La Valle                          |                          |
| Woodland                          |                          |
| County—Vernon:                    |                          |
| Parts of county:                  |                          |
| Clinton                           |                          |
| Hillsboro (City)                  |                          |
| Ontario (Village)                 |                          |
| Stark                             |                          |
| Whitestown                        |                          |
| Hillsboro (Township)              |                          |
| Greenwood                         |                          |
| Union Town (Part)                 |                          |
| Forest                            |                          |
| Inner City North (Milwaukee)..... | 01                       |
| County—Milwaukee:                 |                          |
| Parts of county:                  |                          |
| C.T. 66                           |                          |
| C.T. 67                           |                          |
| C.T. 68                           |                          |
| C.T. 69                           |                          |
| C.T. 70                           |                          |
| C.T. 81                           |                          |
| C.T. 82                           |                          |
| C.T. 83                           |                          |
| C.T. 84                           |                          |
| C.T. 85                           |                          |
| C.T. 86                           |                          |
| C.T. 101                          |                          |
| C.T. 102                          |                          |
| C.T. 103                          |                          |
| C.T. 104                          |                          |

## WISCONSIN—Continued

## Service area name

| Service area name      | Degree of shortage group |
|------------------------|--------------------------|
| C.T. 105               |                          |
| C.T. 106               |                          |
| C.T. 114               |                          |
| C.T. 115               |                          |
| C.T. 116               |                          |
| C.T. 117               |                          |
| C.T. 118               |                          |
| C.T. 139               |                          |
| C.T. 140               |                          |
| C.T. 141               |                          |
| C.T. 142               |                          |
| Kickapoo Valley.....   | 01                       |
| County—Crawford:       |                          |
| Parts of county:       |                          |
| Utica Town             |                          |
| Mount Sterling Village |                          |
| Gays Mills Village     |                          |
| Bell Center Village    |                          |
| Haney Town             |                          |
| Scott Town             |                          |
| Clayton Town           |                          |
| Soldiers Grove Village |                          |
| County—Richland:       |                          |
| Parts of county:       |                          |
| Bloom Town (Part)      |                          |
| Viola Village (Part)   |                          |
| Sylvan Village (Part)  |                          |
| Forest Town            |                          |
| County—Vernon:         |                          |
| Parts of county:       |                          |
| Union Town (Part)      |                          |
| Stark Town             |                          |
| La Farge Village       |                          |
| Forest Town            |                          |
| Ontario Village        |                          |
| Whitestown Town        |                          |
| Clinton Town           |                          |
| Webster Town           |                          |
| Liberty Town           |                          |
| Viola Village (Part)   |                          |
| Kickapoo Town          |                          |
| Readstown Village      |                          |
| Mountain.....          | 01                       |
| County—Forest:         |                          |
| Parts of county:       |                          |
| Freedom Township       |                          |
| Wabeno Township        |                          |
| Blackwell Township     |                          |
| County—Langlade:       |                          |
| Parts of county:       |                          |
| Evergreen Township     |                          |
| Wolf River Township    |                          |
| White Lake Village     |                          |
| County—Oconto:         |                          |
| Parts of county:       |                          |
| Townsend Township      |                          |
| Lakewood Township      |                          |
| Doty Township          |                          |
| Riverview Township     |                          |
| Armstrong Township     |                          |
| Breed Township         |                          |
| Bagley Township        |                          |
| Brazeau Township       |                          |
| Whitehall/Arcadia..... | 01                       |
| County—Buffalo:        |                          |
| Parts of county:       |                          |
| Cross                  |                          |
| Glencoe                |                          |
| Milton                 |                          |
| County—Trempealeau:    |                          |
| Parts of county:       |                          |
| Arcadia (City)         |                          |
| Arcadia (Township)     |                          |
| Blair (City)           |                          |
| Burnside (Town)        |                          |
| Chimney Rock           |                          |
| Dodge                  |                          |
| Hale                   |                          |
| Independence (City)    |                          |
| Lincoln                |                          |
| Pigeon                 |                          |
| Pigeon Falls (Village) |                          |
| Preston                |                          |
| Whitehall              |                          |



NOTICES

WYOMING

County Listing

| County name                         | Degree of shortage group |
|-------------------------------------|--------------------------|
| Albany:                             |                          |
| Service area, Hanna-Rock River..... | 01                       |
| Campbell.....                       | 03                       |
| Carbon:                             |                          |
| Service area, Hanna-Rock River..... | 01                       |
| Converse.....                       | 04                       |
| Crook.....                          | 03                       |
| Freemont:                           |                          |
| Service area, Sweetwater.....       | 01                       |
| Service area, Dubois.....           | 01                       |
| Johnson:                            |                          |
| Service area, Kaycee.....           | 01                       |
| Natrona:                            |                          |
| Service area, Sweetwater.....       | 01                       |
| Platte.....                         | 03                       |
| Sublette:                           |                          |
| Service area, Big Piney.....        | 01                       |

Service Area Listing

| Service area name         | Degree of shortage group |
|---------------------------|--------------------------|
| Big Piney.....            | 01                       |
| County—Sublette:          |                          |
| Parts of county:          |                          |
| Big Piney CCD.....        | 01                       |
| Dubois.....               | 01                       |
| County—Freemont:          |                          |
| Parts of county:          |                          |
| Dubois CCD.....           | 01                       |
| Hanna-Rock River.....     | 01                       |
| County—Albany:            |                          |
| Parts of county:          |                          |
| Rock River CCD.....       | 01                       |
| County—Carbon:            |                          |
| Parts of county:          |                          |
| Hanna CCD.....            | 01                       |
| Kaycee.....               | 01                       |
| County—Johnson:           |                          |
| Parts of county:          |                          |
| Kaycee CCD.....           | 01                       |
| Sweetwater.....           | 01                       |
| County—Freemont:          |                          |
| Parts of county:          |                          |
| Sweetwater CCD.....       | 01                       |
| Shoshoni CCD.....         | 01                       |
| County—Natrona:           |                          |
| Parts of county:          |                          |
| Hell's Half Acre CCD..... | 01                       |

AMERICAN SAMOA

County Listing

| County name                              | Degree of shortage group |
|------------------------------------------|--------------------------|
| Manu'a District.....                     | 01                       |
| Eastern Tutuila District:                |                          |
| Service area, Tutuila Island—Aunu'u..... | 03                       |
| Western Tutuila District:                |                          |
| Service area, Tutuila Island—Aunu'u..... | 03                       |

Service Area Listing

| Service area name                    | Degree of shortage group |
|--------------------------------------|--------------------------|
| Tutuila Island—Aunu'u.....           | 03                       |
| County—Eastern Tutuila District..... |                          |
| County—Western Tutuila District..... |                          |

PUERTO RICO

Municipio Listing

| Municipio name                         | Degree of shortage group |
|----------------------------------------|--------------------------|
| Adjuntas:                              |                          |
| Service area, Guaraguan community..... | 01                       |
| Barranquitas:                          |                          |
| Service area, Barranquitas.....        | 01                       |
| Comerio:                               |                          |
| Service area, Barranquitas.....        | 01                       |
| Corozal:                               |                          |
| Service area, Barranquitas.....        | 01                       |
| Naranjito:                             |                          |
| Service area, Barranquitas.....        | 01                       |
| Orocovis:                              |                          |
| Service area, Barranquitas.....        | 01                       |
| Penuelas:                              |                          |
| Service area, Guaraguan community..... | 01                       |
| Ponce:                                 |                          |
| Service area, Guaraguan community..... | 01                       |

Service Area Listing

| Service area name           | Degree of shortage group |
|-----------------------------|--------------------------|
| Barranquitas.....           | 01                       |
| Municipio—Barranquitas..... |                          |
| Municipio—Comerio.....      |                          |
| Municipio—Corozal.....      |                          |
| Municipio—Naranjito.....    |                          |
| Municipio—Orocovis.....     |                          |
| Guaraguan community.....    | 01                       |
| Municipio—Adjuntas:         |                          |
| Parts of county:            |                          |
| Portugues barrio.....       |                          |
| Municipio—Penuelas:         |                          |
| Parts of county:            |                          |
| Rocio barrio.....           |                          |
| Municipio—Ponce:            |                          |
| Parts of county:            |                          |
| Guaraguan barrio.....       |                          |

VIRGIN ISLANDS

County Listing

| County name                      | Degree of shortage group |
|----------------------------------|--------------------------|
| St. Croix:                       |                          |
| Service area, Fredericksted..... | 01                       |

Service Area Listing

| Service area name    | Degree of shortage group |
|----------------------|--------------------------|
| Fredericksted.....   | 01                       |
| Island—St. Croix:    |                          |
| Island Subdivisions: |                          |
| ED. 13.....          |                          |
| ED. 14.....          |                          |
| ED. 19.....          |                          |
| ED. 20.....          |                          |
| ED. 21.....          |                          |
| ED. 22.....          |                          |
| ED. 23.....          |                          |
| ED. 24.....          |                          |
| ED. 25.....          |                          |

SUPPLEMENTAL LIST OF NHSC-STAFFED DENTAL SITES PREVIOUSLY DESIGNATED UNDER SECTION 329 (b)

ALABAMA

Macon County—John Andrero Clinic, Tuskegee (Macon County)

ARKANSAS

Perry County—Perry County, Perryville (Perry County)

COLORADO

Saguache County—Saguache Dental Clinic, Saguache (Saguache County)

FLORIDA

Franklin County—Apalachicola Health Clinic, Apalachicola (Franklin County)  
Frostburg—Florida Rural Health Service, Frostburg (Polk County)  
Immokalee—Immokalee Health Care Center, Immokalee (Collier County)

LOUISIANA

West Carroll Parish—West Carroll Hospital Inc., Oak Grove (West Carroll Parish)

MAINE

Washington County—Lubec Medical Center, Lubec (Washington County)

MAINE

Washington County—Washington County Health Plan, Eastport (Washington County)  
Vinalhaven Service Area—Island Community Medical Center, Vinalhaven (Knox County)  
Rangeley-Kingfield Service Area—Rangeley Health Council, Rangeley (Franklin County)

MISSISSIPPI

Bolivar County—Levee Street Clinic, Rosedale (Bolivar County)

MONTANA

Liberty Dental Service Area—Liberty County Health Planning, Chester (Liberty County)  
Daniels County—Prairie Professional Clinic, Seobey (Daniels County)  
Roosevelt County—medical Dental Center, Poplar (Roosevelt County)  
Shelby—Health Planning Council, Shelby (Toole County)

NEW MEXICO

Rio Arriba County—La Clinica del Pueblo de Rio, Tierra Amarilla (Rio Arriba County)  
Rio Arriba County—El Rito Betterment Association, El Rito (Rio Arriba County)  
Ft. Sumner-Santa Rosa Service Area—Santa Rosa Dental Clinic, Santa Rosa (Guadalupe County)  
Rio Arriba County—Home Education Livelihood Project, Espanola (Rio Arriba County)

NORTH CAROLINA

Northhampton County—Northhampton Medical Center, Jackson (Northhampton County)  
Greene County—Greene County Health Care, Snow Hill (Greene County)  
Cherokee County—Upper Hiwassee Dental Project, Murphy (Cherokee County)

NORTH DAKOTA

Grant County—Grant County Medical and Dental, Elgin (Grant County)  
McIntosh County—Ashley Lions Dental Clinic, Ashley (McIntosh County)  
Oliver County—Oliver County Health Service, Center (Oliver County)

OKLAHOMA

Osage County—Fairfax Dental Office, Fairfax (Osage County)

PUERTO RICO

Mayaguez Service Area—Mayaguez Medical Center, Mayaguez  
Rincon Service Area—Rincon Rural Health, Rincon  
San Sebastian Service Area—San Sebastian Western Region Health, San Sebastian

TENNESSEE

Decatur County—Decatur County Medical Center, Parsons (Decatur County)  
Clatsborne County—Tazewell Dental Clinic, Tazewell (Claiborne County)  
Morgan County—Morgan County Medical Center, Wartburg (Morgan County)  
Hickman County—Family Dental Clinic, Centerville (Hickman County)  
Hancock County—Hancock County Health Planning, Sneedville (Hancock County)  
Campbell County—Town of Elk Valley, Elk Valley (Campbell County)

Carter County—Cloudland Dental Clinic, Roan Mountain (Carter County)  
Cheatham County/Springfield Service Area—Cheatham County Health Services, Ashland City (Cheatham County)

TEXAS

Starr County—Starr County, Rio Grand City (Starr County)  
Farwell Service Area—Farwell Clinic, Farwell (Parrmes County)

VIRGINIA

Dickenson County—Haysi Community Clinic, Haysi (Dickenson County)  
Grayson County—Troutdale Community Health Clinic, Troutdale (Grayson County)  
Craig County—Craig Dental Clinic, New Castle (Craig County)  
Buckingham/Cumberland/Fluvanna Service Area—Central Virginia Community Health, New Canton (Buckingham County)

[FR Doc. 78-33991 Filed 12-28-78; 8:45 am]



FRIDAY, DECEMBER 29, 1978

PART V



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**DEPARTMENT OF  
LABOR**

**Employment Standards  
Administration**

■

**MINIMUM WAGES FOR  
FEDERAL AND FEDERALLY  
ASSISTED  
CONSTRUCTION**

**General Wage Determination  
Decisions**



| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Fr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H L W                    | Pensions | Vacation |  |                            |
| 9.85               |                          |          |          |  |                            |
| 11.45              | .55                      | .40      |          |  | .05                        |
| 9.60               |                          | 38*.40   |          |  | 4 of 18                    |
|                    |                          | .40      |          |  | .05                        |

| Decision NO. AZ78-5114 - Mod. #7<br>(43 FR 35826 - August 11, 1978)<br>Statewide, Arizona                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Decision NO. AZ78-1069 - Mod. #1<br>(43 FR 40172 September 8, 1978)<br>Tuscaloosa County, Alabama |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <p><u>Change:</u></p> <p>ELECTRICIANS: (Phoenix Area)</p> <p>Zone A (Beginning at the north-east corner, a line extending southward on Bush Highway to McKellips Road; a line extending east on McKellips Road to a point one mile east of the intersection of State Highway 88 and U. S. 60 and 70 near Apache Junction; Southward to Baseline Road; west on Baseline Road to the intersection of Baseline Road and Ellsworth Road; South on Ellsworth Road to Hunt Highway; west on Hunt Highway to Powers Road; a line extending south on Powers Road five miles, then extending straight west to a point five miles west of Interstate 10, then northwest on a line parallel with Interstate 10 to intersect with Pecos Road, west on Pecos Road to intersect with Cotton Lane, North on Cotton Lane to Beloit Road. West on Beloit Road to Airport Road. North on Airport Road in a straight line to intersect Waddell Road. East on Waddell Road to intersect with Cotton Lane, North on Cotton Lane to Deer Valley Drive and east on Deer Valley Drive to intersect with Bush Highway including Luke and Williams Air Force Bases.)</p> | <p><u>Change:</u></p> <p>Bricklayers</p> <p>Electricians</p> <p>Tile workers</p>                  |



DECISION NO. A278-5114 (Cont'd)

MODIFICATIONS P. 2

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | H & W                    | Pensions | Vacation |  |                            |
| Zone B (Area outside of Zone A and bounded by a line formed by measuring sixteen (16) road miles from the outer boundaries of an area enclosed by the following boundaries: Power Road on the east, from Hunt Highway on the south to one mile south of Pinnacle Peak Road on the north; One mile south of Pinnacle Peak Road to Cotton Lane on the west; Cotton Lane to Pecos Road on the south. Pecos Road to Price Road and from Price Road to Hunt Highway on the south. Hunt Highway to Powers Road on the east) | .96                      | 38+.88   |          |  | 3/48                       |
| Zone C (outside edge of Zone B and extended to the outside limits of the Union's jurisdiction)                                                                                                                                                                                                                                                                                                                                                                                                                        | .96                      | 38+.88   |          |  | 3/48                       |

DECISION NO. A278-5115 - Mod. 86 (43 FR 33018 - July 28, 1978) Maricopa County, Arizona

Change:

ELECTRICIANS:  
Zone A (Beginning at the north-east corner, a line extending southward on Bush Highway to McKellips Road; a line extending east on McKellips Road to a point one mile east of the intersection of State Highway 88 and U. S. 60 and 70 near Apache Junction; southward to Baseline Road; west on Baseline Road to the intersection of Baseline Road and Ellsworth Road; South on Ellsworth Road to Hunt Highway; West on Hunt Highway to Powers Road; a line extending south on Powers Road five miles, then extending straight west to a point five miles west of Interstate 10, then northwest on a line parallel with Interstate 10 to intersect with Pecos Road; West on Pecos Road; Intersect with Cotton Lane. North on Cotton Lane to Beloit Road. West on Beloit Road to Airport Road. North on Airport Road in a straight line to intersect Waddell Road. East on Waddell Road to intersect with Cotton Lane. North on Cotton Lane to Deer Valley Drive and east on Deer Valley Drive to intersection with Bush Highway and including Luke and Williams Air Force Bases.)  
Electricians.

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
|                    | .96                      | 38+.88   |          |  | 3/48                       |

MODIFICATIONS P. 4

DECISION NO. A278-5115 (Cont'd)

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Fringe Benefits Payments |                            |          |  | Education and/or Appr. Tr. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | H & W                    | Pensions                   | Vacation |  |                            |
| Zone B (Area outside of Zone A and bounded by a line formed by measuring sixteen (16) road miles from the outer boundaries of an area enclosed by the following boundaries: Power Road on the east from Hunt Highway on the south to one mile south of Pinnacle Peak Road on the north. One mile south of Pinnacle Peak Road to Cotton Lane on the west. Cotton Lane to Pecos Road on the south. Pecos Road to Price Road and from Price Road to Hunt Highway on the south. Hunt Highway to Powers Road on the east.)<br>Electricians | \$15.55                  | 38+.88                     |          |  | 3/48                       |
| Zone C (Outside edge of Zone B and extend to the outside limits of the Union's jurisdiction)<br>Electricians                                                                                                                                                                                                                                                                                                                                                                                                                          | 16.55                    | 38+.88                     |          |  | 3/48                       |
| Ironworkers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12.20                    | 2.47                       |          |  | .11                        |
| Omit:<br>Electricians:<br>Zone A - Cable Splicers<br>Zone B - Cable Splicers<br>Zone C - Cable Splicers                                                                                                                                                                                                                                                                                                                                                                                                                               | 12.64<br>14.85<br>15.99  | 38+.88<br>38+.88<br>38+.88 |          |  | 3/48<br>3/48<br>3/48       |

MODIFICATIONS P. 5

DECISION NO. A278-4064 - Mod. 86 (43 FR 17341 - June 23, 1978) Pulaski County, Arkansas  
CHANGE:  
CARPENTERS:  
Carpenters  
Millwrights & Pile-drivers  
ROOFERS  
BOILERMAKERS  
\$1,000,000:  
Carpenters  
Millwrights-Pile-drivers  
Carpenters (Clarke and Hemminger of Hot Springs County  
Carpenters  
Millwrights & Pile-drivers  
PLUMBERS & PIPEFITTERS:  
Zone A  
Zone B  
Zone C  
ROOFERS  
LABORERS:  
Group I  
Group II  
Group III  
Group IV  
Group V  
Group VI  
Group VII

| Basic Hourly Rates | Fringe Benefits Payments                             |                                               |                                               |  | Education and/or Appr. Tr. |
|--------------------|------------------------------------------------------|-----------------------------------------------|-----------------------------------------------|--|----------------------------|
|                    | H & W                                                | Pensions                                      | Vacation                                      |  |                            |
|                    | 9.22<br>9.72<br>11.05                                | .45<br>.45<br>.80                             | .35<br>.35<br>1.00                            |  | .05<br>.05<br>.02          |
|                    | 11.43<br>11.93                                       | .45<br>.45                                    | .35<br>.35                                    |  | .05<br>.05                 |
|                    | 9.22<br>9.72                                         | .45<br>.45                                    | .35<br>.35                                    |  | .05<br>.05                 |
|                    | 10.45<br>11.10<br>11.65<br>9.00                      | .60<br>.60<br>.60<br>.10                      | .55<br>.55<br>.55<br>.10                      |  | .10<br>.10<br>.10          |
|                    | 6.25<br>6.50<br>6.65<br>6.75<br>6.90<br>7.15<br>7.05 | .33<br>.33<br>.33<br>.33<br>.33<br>.33<br>.33 | .60<br>.60<br>.60<br>.60<br>.60<br>.60<br>.60 |  |                            |







## NOTICES

| DECISION NO. OR78-4054 - Mod. #5<br>(43 FR 25268 - June 6, 1978)<br>Oklahoma, Cleveland, Caddo, Grady,<br>Canadian, Kingfisher, Lincoln,<br>Logan, McClain, Seminole, and<br>Pottawatomie Counties, Oklahoma | Fringe Benefits Payments |       |          |          |                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------|----------|----------------------------------|
|                                                                                                                                                                                                              | Basic<br>Hourly<br>Rates | H & W | Pensions | Vacation | Education<br>and/or<br>Appr. Tr. |
| CHANGE:                                                                                                                                                                                                      | \$10.70                  |       |          |          | .01                              |
| PLASTERERS                                                                                                                                                                                                   | 9.60                     | .50   |          |          | .03                              |
| SOFT FLOOR LAYERS                                                                                                                                                                                            |                          |       |          |          |                                  |
| ELECTRICIANS:                                                                                                                                                                                                |                          |       |          |          |                                  |
| Zone I                                                                                                                                                                                                       | 11.35                    | .70   | 32+.50   |          | 1%                               |
| Zone II                                                                                                                                                                                                      | 11.60                    | .70   | 32+.50   |          | 1%                               |
| Zone III                                                                                                                                                                                                     | 11.85                    | .70   | 32+.50   |          | 1%                               |
| CABLE SPlicERS:                                                                                                                                                                                              |                          |       |          |          |                                  |
| Zone I                                                                                                                                                                                                       | 11.60                    | .70   | 32+.50   |          | 1%                               |
| Zone II                                                                                                                                                                                                      | 11.85                    | .70   | 32+.50   |          | 1%                               |
| Zone III                                                                                                                                                                                                     | 12.10                    | .70   | 32+.50   |          | 1%                               |
| LATHERS                                                                                                                                                                                                      | 10.70                    |       |          |          | .01                              |
| PLASTERERS                                                                                                                                                                                                   | 10.70                    |       |          | .25      | .01                              |
| SOFT FLOOR LAYERS                                                                                                                                                                                            | 9.60                     | .50   |          |          | .03                              |
| LINE CONSTRUCTION:                                                                                                                                                                                           |                          |       |          |          |                                  |
| Linemen                                                                                                                                                                                                      | 10.60                    |       | 3%       |          | 1/2%                             |
| Cable Splicers                                                                                                                                                                                               | 11.29                    |       | 3%       |          | 1/2%                             |
| Hole digger Operator                                                                                                                                                                                         | 9.62                     |       | 3%       |          | 1/2%                             |
| Heavy equipment operators (or<br>pole cat equivalent)                                                                                                                                                        | 9.62                     |       | 3%       |          | 1/2%                             |
| Line truck driver (winch op.)                                                                                                                                                                                | 8.71                     |       | 3%       |          | 1/2%                             |
| Jackhammerman                                                                                                                                                                                                | 7.93                     |       | 3%       |          | 1/2%                             |
| Powderman                                                                                                                                                                                                    | 9.62                     |       | 3%       |          | 1/2%                             |
| Groundman (1st year)                                                                                                                                                                                         | 5.51                     |       | 3%       |          | 1/2%                             |
| Groundman                                                                                                                                                                                                    | 7.07                     |       | 3%       |          | 1/2%                             |
| Truck driver (flat bed, ton &<br>half and under)                                                                                                                                                             | 7.55                     |       | 3%       |          | 1/2%                             |

| DECISION NO. 0678-4055 - Mod. #4<br>(43 FR 25210 - June 9, 1978)<br>Tulsa, Creek, Craig, Ottawa,<br>Delaware, Naves and Rogers<br>Counties, Oklahoma | Fringe Benefits Payments |       |          |         |                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------|---------|----------------------------------|
|                                                                                                                                                      | Basic<br>Hourly<br>Rates | H & W | Pensions | Vocelon | Education<br>and/or<br>Appr. Tr. |
| CHANGE:<br>SHEET METAL WORKERS<br>LINE CONSTRUCTION:                                                                                                 | \$11.27                  | .50   | .66      |         | .10                              |
| Linenen                                                                                                                                              | 10.60                    |       | 3%       |         | 1/2%                             |
| Cable splicers                                                                                                                                       | 11.29                    |       | 3%       |         | 1/2%                             |
| Hole digger operator                                                                                                                                 | 9.62                     |       | 3%       |         | 1/2%                             |
| Heavy equipment op. (pole or<br>cat equivalent)                                                                                                      | 9.62                     |       | 3%       |         | 1/2%                             |
| Jackhammermen                                                                                                                                        | 7.93                     |       | 3%       |         | 1/2%                             |
| Line truck driver (winch op.)                                                                                                                        | 8.71                     |       | 3%       |         | 1/2%                             |
| Powerman                                                                                                                                             | 9.62                     |       | 3%       |         | 1/2%                             |
| Truck driver (flat bed ton,<br>and half and under)                                                                                                   | 7.55                     |       | 3%       |         | 1/2%                             |
| LATHERS                                                                                                                                              | 10.65                    |       |          |         | .01                              |
| DECISION NO. 0678-4056 - Mod. #3<br>(43 FR 25273 - June 9, 1978)<br>Muskogee, Adair, Cherokee and<br>Okmulgee Counties, Oklahoma                     |                          |       |          |         |                                  |
| CHANGE:<br>BRICKLAYERS<br>CEMENT MASONS (AREA 1)                                                                                                     | 11.20                    | .60   | .40      |         | .05                              |
| Cement masons                                                                                                                                        | 9.90                     |       |          |         |                                  |
| Power tool operators                                                                                                                                 | 10.15                    |       |          |         | .10                              |
| SHEET METAL WORKERS                                                                                                                                  | 11.27                    | .50   | .66      |         | .15                              |
| PLUMBERS & PIPEFITTERS                                                                                                                               | 12.00                    | .55   | .80      |         | 1/2%                             |
| LINE CONSTRUCTION:                                                                                                                                   |                          |       |          |         | 1/28                             |
| Linenen                                                                                                                                              | 10.60                    |       | 3%       |         | 1/2%                             |
| Cable splicers                                                                                                                                       | 11.29                    |       | 3%       |         | 1/2%                             |
| Hole digger op. & Heavy equip.<br>op. (pole or cat equivalent)                                                                                       | 9.62                     |       | 3%       |         | 1/2%                             |
| Jackhammerman                                                                                                                                        | 7.93                     |       | 3%       |         | 1/2%                             |
| Line truck driver (winch op.)                                                                                                                        | 8.71                     |       | 3%       |         | 1/2%                             |
| Powerman                                                                                                                                             | 9.62                     |       | 3%       |         | 1/2%                             |
| Groundman                                                                                                                                            | 7.07                     |       | 3%       |         | 1/2%                             |
| Truck driver (flat bed ton and<br>half and under                                                                                                     | 7.55                     |       | 3%       |         | 1/2%                             |
| LATHERS                                                                                                                                              | 10.65                    |       |          |         | .01                              |

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

## MODIFICATIONS P. 12

[illegible]

| DECISION NO. 0K78-4058 - Mod. #3<br>(43 FR 26258 - June 16, 1978)<br>McIntosh County, Oklahoma                                                                                                                                                                                                                                              | Fringe Benefits Payments |       |          |          | Education<br>and/or<br>Appr. Tr. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------|----------|----------------------------------|
|                                                                                                                                                                                                                                                                                                                                             | Basic<br>Hourly<br>Rates | H A W | Pensions | Vacation |                                  |
| CHANGE:<br>CEMENT MASONS<br>PLUMBERS-STEAMFITTERS<br>SHEET METAL WORKERS<br>LINE CONSTRUCTION:<br>Linenen<br>Cable splicers<br>Hole digger operator<br>Heavy equipment operator (or<br>pole cat equivalent)<br>Line truck driver (winch op.)<br>Jackhammerman<br>Powderman<br>Groundman<br>Truck driver (flat bed, ton &<br>half and under) | \$ 9.90                  | .55   | .80      |          | .15                              |
|                                                                                                                                                                                                                                                                                                                                             | 12.00                    | .50   | .66      |          | .10                              |
|                                                                                                                                                                                                                                                                                                                                             | 11.27                    |       |          |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 10.60                    |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 11.29                    |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 9.62                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 9.62                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 8.71                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 7.93                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 9.62                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 9.62                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 7.55                     |       | 3x       |          | 1/2x                             |
|                                                                                                                                                                                                                                                                                                                                             | 13.70                    | .60   | .40      |          | .05                              |
|                                                                                                                                                                                                                                                                                                                                             | 9.90                     |       |          |          | .15                              |
| 12.00                                                                                                                                                                                                                                                                                                                                       | .55                      | .80   |          | .10      |                                  |
| 11.27                                                                                                                                                                                                                                                                                                                                       | .50                      | .66   |          | 1/2x     |                                  |
| 10.60                                                                                                                                                                                                                                                                                                                                       |                          | 3x    |          | 1/2x     |                                  |
| 11.29                                                                                                                                                                                                                                                                                                                                       |                          | 3x    |          | 1/2x     |                                  |
| 9.62                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 9.62                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 8.71                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 7.93                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 9.62                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 7.07                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |
| 7.55                                                                                                                                                                                                                                                                                                                                        |                          | 3x    |          | 1/2x     |                                  |

|                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| DECISION NO. 0K78-4059 - Mod. #3<br>(43 FR 26258 - June 16, 1978)<br>Wagoner County, Oklahoma                                                                                                                                                                                                                                                                                                           |  |
| CHANGE:<br>BRICKLAYERS<br>CEMENT MASONS (ZONE II)<br>Remainder of Wagoner County<br>PLUMBERS & STEAMFITTERS<br>SHEET METAL WORKERS<br>LINE CONSTRUCTION:<br>Linenen<br>Cable splicers<br>Hole digger operator<br>Heavy equipment operator (or<br>pole cat equivalent)<br>Line truck driver (winch op.)<br>Jackhammerman<br>Powderman<br>Groundman<br>Truck driver (flat bed, ton<br>and half and under) |  |

## MODIFICATIONS P. 13



DECISION NO. OK78-4060 - Mod. #2  
(43 FR 26263 - June 16, 1978)  
Garfield County, Oklahoma

## CHANGE:

## ELECTRICIANS:

Zone I

Zone II

Zone III

## CABLE SPLICERS:

Zone I

Zone II

Zone III

DECISION NO. OK78-4061 - Mod. #3  
(43 FR 26269 - June 16, 1978)  
Comanche County, Oklahoma

## CHANGE:

## BRICKLAYERS-STONEMASONS

SOFT FLOOR LAYERS

DECISION NO. OK78-4062 - Mod. #3  
(43 FR 26265 - June 16, 1978)  
Pittsburg County, Oklahoma

## CHANGE:

## SHEET METAL WORKERS

SOFT FLOOR LAYERS

PLUMBERS-PIPEFITTERS

BRICKLAYERS

## LINE CONSTRUCTION:

Linemen

Cable splicers

Hole digger operator

Heavy equipment op.(or pole

cat equivalent)

Line truck driver (winch op.)

Jackhammerman

Powderman

Groundman

Truck driver (flat bed, ton &amp;

half and under)

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$11.35            | .70                      | 32+.50   |          |  | 1/22                       |
| 11.60              | .70                      | 32+.50   |          |  | 1/22                       |
| 11.85              | .70                      | 32+.50   |          |  | 1/22                       |
| 11.60              | .70                      | 32+.50   |          |  | 1/22                       |
| 11.85              | .70                      | 32+.50   |          |  | 1/22                       |
| 12.10              | .70                      | 32+.50   |          |  | 1/22                       |
| 9.91               | .62                      | .40      |          |  | .12                        |
| 9.60               | .50                      |          | .25      |  | .03                        |
| 11.27              | .50                      | .66      | .01a     |  | .10                        |
| 7.71               | .45                      | .80      |          |  | .03                        |
| 12.00              | .55                      | .80      |          |  | .15                        |
| 10.25              | .45                      | .40      |          |  | .05                        |
| 10.60              |                          | 32       |          |  | 1/22                       |
| 11.29              |                          | 32       |          |  | 1/22                       |
| 9.62               |                          | 32       |          |  | 1/22                       |
| 9.62               |                          | 32       |          |  | 1/22                       |
| 8.71               |                          | 32       |          |  | 1/22                       |
| 7.93               |                          | 32       |          |  | 1/22                       |
| 9.62               |                          | 32       |          |  | 1/22                       |
| 7.07               |                          | 32       |          |  | 1/22                       |
| 7.55               |                          | 32       |          |  | 1/22                       |

DECISION #UT78-5128 - Mod. #3  
(43 FR 46480 - October 6, 1978)  
Statewide Utah

## Change:

## Roofers

Sheet Metal Workers

DECISION NO. VA78-3096 - Mod. # 1  
(43 FR 55218 - November 24, 1978)  
Campbell County and the Independent  
City of Lynchburg, Virginia

## Change:

## Location to Read:

County: Campbell County and  
the Independent City of Lynch-  
burg

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$10.24            | .57                      | .35      |          |  | .05                        |
| 11.75              | .60                      | .87      |          |  | .10                        |

## FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

## SUPERSEDES DECISION

STATE: Alaska

DECISION NUMBER: AK78-5131

COUNTIES: Statewide

DATE: Date of Publication

DATE: March 10, 1978, in 43 FR 10160

SUPERSEDES DECISION No. AK78-5020 dated March 10, 1978, in 43 FR 10160

DESCRIPTION OF WORK: Building construction (including residential construction

consisting of single family homes and garden type apartments up to and including

4 stories), Heavy and Highway Construction and Dredging.

| Basic Hourly Rates | Fringe-Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$20.36            | .44                      | \$ 1.20  |          |  | .10                        |
| 17.485             | 1.075                    | 1.00     | .75      |  | .02                        |
| 16.68              | .90                      | 2.45     |          |  | .09                        |
| 16.86              | .90                      | 2.00     |          |  | .10                        |
| 17.25              | .90                      | 2.00     |          |  | .10                        |
| 17.25              | .90                      | 2.00     |          |  | .10                        |
| 17.40              | .90                      | 2.00     |          |  | .10                        |
| 15.82              | .70                      | 1.65     |          |  | .10                        |
| 15.81              | .70                      | 1.65     |          |  | .15                        |
| 16.19              | .70                      | 1.65     |          |  | .15                        |
| 16.34              | .70                      | 1.65     |          |  | .15                        |
| 15.82              | .70                      | 1.65     |          |  | .15                        |
| 14.30              | .80                      | 2.33     |          |  | .15                        |
| 14.83              | .80                      | 2.33     |          |  | .15                        |
| 14.83              | .80                      | 2.33     |          |  | .15                        |
| 14.45              | .80                      | 2.33     |          |  | .15                        |
| 13.31              | .50                      | 2.00     |          |  | .04                        |
| 12.95              | .50                      | 2.00     |          |  | .04                        |
| 12.06              | .50                      | 2.00     |          |  | .04                        |

AREA I (North of the 63rd Parallel)

AREA II (South of the 63rd Parallel and West of the 141st Meridian)

AREA III (East of the 141st Meridian)

## ASBESTOS WORKERS

## BOILERMAKERS

## BRICKLAYERS; Blocklayers;

Stonemasons

## CARPENTERS:

Area I

## Carpenters

Powder actuated tool operator

Demolition or similar type saw

operator; Marble and

Acoustical; Fire or Floor

Repair work applicators;

Nailing Machine Operator;

Saw Filer

Millwrights

Piledrivers

Areas II and III

Journeyman Carpenters

Acoustical and Marble

Applicators; Floor Workers;

Radial Air Saw Operators;

Fire and Floor Workers

Millwrights

Piledrivers

## CEMENT MASONS:

Cement Masons, paving (concrete),

Curb, Gutter and Sidewalks

Operating Screeding and Rodding

Machines, applicator of all

Composition, Mastic, Epoxy and

Plastic Materials

Hand Powered Grinder

Form Setters

## CULINARY WORKERS:

Baker of Combination Cook-Baker,

Head Cook; Working Camp Manager

Cook

Butcher

DECISION NO. AK78-5131

Page 2

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$12.57            | .50                      | \$ 2.00  |          |  | .04                        |
| 11.47              | .50                      | 2.00     |          |  | .04                        |
| 11.31              | .50                      | 2.00     |          |  | .04                        |
| 18.95              | 1.05                     | 32+3.00  |          |  | .15                        |
| 20.70              | 1.05                     | 32+3.00  |          |  | .15                        |
| 10.25              | 1.05                     |          |          |  | .05                        |
| 19.97              | .895                     | 32+.69   | a        |  | .03                        |
| 13.98              | .895                     | 32+.69   | a        |  | .03                        |
| 9.985              |                          |          |          |  |                            |
| 16.39              | .70                      | 1.00     | 1.00     |  | .10                        |
| 17.04              | .70                      | 1.00     |          |  |                            |
| 17.85              | 1.05                     | 3.00     |          |  | .30                        |
| 16.71              | .70                      | 1.08     |          |  | .04                        |
| 16.95              | 1.05                     | 32+3.00  |          |  | .15                        |
| 18.95              | 1.05                     | 32+3.00  |          |  | .15                        |
| 20.70              | 1.05                     | 32+3.00  |          |  | .15                        |
| 16.95              | 1.05                     | 32+3.00  |          |  | .15                        |
| 16.68              | .90                      | 2.25     |          |  | .09                        |

CULINARY WORKERS: (Cont'd)

Head Waiter or Head Waitress

Head Bullcook

Camp Worker (waiter, waitress,

Bullcook, General Helper, Mis-

cellaneous Worker); Bartender

ELECTRICIANS:

Electricians; Technicians

Cable Splicers

Residential Construction

ELEVATOR CONSTRUCTORS

ELEVATOR CONSTRUCTORS' HELPERS

ELEVATOR CONSTRUCTORS' HELPERS

(FROM.)

GLAZIERS:

Area I

Areas II and III

IRONWORKERS:

Bender Operator; Bridge; Fence

Erector; Machinery Mover;

Ornamental; Reinforcing;

Sheeter; Structural

LATHERS

LINE CONSTRUCTION:

Groundmen

Equipment Operators; Linemen;

Technicians

Cable Splicers

Powderman

MARBLE SETTERS; Terrazzo Workers

PAINTERS:

Area I (within a 10 mile radius

of the Fairbanks Post

Office including Ft.

Wainwright)



| PRINTERS: (Cont'd)                                                                                                                                                                        | Fringe Benefits Payments |       |          |          | Education and/or Appr. Tr. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------|----------|----------------------------|
|                                                                                                                                                                                           | Basic Hourly Rates       | H & W | Pensions | Vacation |                            |
| Zone 2 (Beyond 10 miles and up to 40 miles radius of the Fairbanks Post Office including the Elson Air Force Base and all the sites within this territory)                                |                          |       |          |          |                            |
| Zone 3 (Beyond 40 miles radius of the Fairbanks Post Office)                                                                                                                              |                          |       |          |          |                            |
| Zone 1 and 3:                                                                                                                                                                             |                          |       |          |          |                            |
| Brush, roller, paper, vinyl                                                                                                                                                               | \$18.15                  | .70   | \$ 2.00  |          | .10                        |
| Utilidor, swing, sign                                                                                                                                                                     | 18.40                    | .70   | 2.00     |          | .10                        |
| Structural steel, pot tender                                                                                                                                                              | 18.65                    | .70   | 2.00     |          | .10                        |
| Sandblaster                                                                                                                                                                               | 19.15                    | .70   | 2.00     |          | .10                        |
| Epoxy, tar, finish metal spray                                                                                                                                                            | 20.25                    | .70   | 2.00     |          | .10                        |
| Spray painter                                                                                                                                                                             | 19.42                    | .70   | 2.00     |          | .10                        |
| Tapers hands                                                                                                                                                                              | 19.42                    | .70   | 2.00     |          | .10                        |
| Machine                                                                                                                                                                                   | 18.68                    | .70   | 2.00     |          | .10                        |
| Buffer operator                                                                                                                                                                           | 18.90                    | .70   | 2.00     |          | .10                        |
| Hardwood finishers                                                                                                                                                                        |                          |       |          |          |                            |
| Zone 2:                                                                                                                                                                                   |                          |       |          |          |                            |
| Brush, roller, paper and vinyl                                                                                                                                                            | 19.00                    | .70   | 2.00     |          | .10                        |
| Hangers                                                                                                                                                                                   | 19.25                    | .70   | 2.00     |          | .10                        |
| Utilidor, swing, bosun, sign                                                                                                                                                              | 19.35                    | .70   | 2.00     |          | .10                        |
| Structural steel, pot tender                                                                                                                                                              | 20.00                    | .70   | 2.00     |          | .10                        |
| Sandblaster                                                                                                                                                                               | 21.10                    | .70   | 2.00     |          | .10                        |
| Epoxy, tar, finish metal spray                                                                                                                                                            | 19.27                    | .70   | 2.00     |          | .10                        |
| Spray painter                                                                                                                                                                             | 20.27                    | .70   | 2.00     |          | .10                        |
| Tapers, hand                                                                                                                                                                              | 19.53                    | .70   | 2.00     |          | .10                        |
| Machine                                                                                                                                                                                   | 19.53                    | .70   | 2.00     |          | .10                        |
| Buffer operators                                                                                                                                                                          |                          |       |          |          |                            |
| Hardwood operators                                                                                                                                                                        |                          |       |          |          |                            |
| Zone 1, 2 and 3:                                                                                                                                                                          |                          |       |          |          |                            |
| Height pay: All work on any form of scaffolding or staging over 40 ft. will be paid \$.25 more per hour and for every additional 20 ft. \$.25 more per hour will be paid to the employee. |                          |       |          |          |                            |
| The height of work shall be determined from the ground to the point of hook-up.                                                                                                           |                          |       |          |          |                            |

| PAINTERS: (Cont'd)                                                                                                                                                                                                                                                                                                                                                                                                                                        | Fringe Benefits Payments |       |          |          | Education and/or Appr. Tr. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------|----------|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Basic Hourly Rates       | H & W | Pensions | Vacation |                            |
| Areas II and III:                                                                                                                                                                                                                                                                                                                                                                                                                                         |                          |       |          |          |                            |
| Brush, roller, sign                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$18.00                  | .70   | \$2.00   |          | .20                        |
| Paper and vinyl, swing stage, taper/drywall, structural steel                                                                                                                                                                                                                                                                                                                                                                                             | 18.40                    | .70   | 2.00     |          | .20                        |
| Spray, sandblast, pot tender                                                                                                                                                                                                                                                                                                                                                                                                                              | 18.60                    | .70   | 2.00     |          | .20                        |
| Epoxy and tar applicator                                                                                                                                                                                                                                                                                                                                                                                                                                  | 19.00                    | .70   | 2.00     |          | .20                        |
| Steeple Jack and Tower                                                                                                                                                                                                                                                                                                                                                                                                                                    | 19.80                    | .70   | 2.00     |          | .20                        |
| Height pay: All classifications, with the exception of steeple jacks and tower painters, a \$.25 hourly premium shall be paid for swing stage work on a structure with height in excess of 40 ft. an additional \$.25 per hourly height pay shall be paid for each additional 50 ft. thereafter. Height pay on all towers and steeplejack work shall start at the 150 ft. level. \$.50 per hour above the scale shall be paid for each additional 100 ft. |                          |       |          |          |                            |
| PLASTERERS                                                                                                                                                                                                                                                                                                                                                                                                                                                | 15.42                    | .70   | 2.28     |          | .15                        |
| PLUMBERS; Steamfitters:                                                                                                                                                                                                                                                                                                                                                                                                                                   |                          |       |          |          |                            |
| Area I                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 18.77                    | .95   | 2.10     |          | .45                        |
| Area II                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 18.65                    | .73   | 1.90     |          | .15                        |
| Area III                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 16.50                    | 1.00  | 1.70     |          | .10                        |
| Residential Construction:                                                                                                                                                                                                                                                                                                                                                                                                                                 |                          |       |          |          |                            |
| Area I                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 14.32                    | .73   | 1.40     |          | .15                        |
| ROOFERS:                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                          |       |          |          |                            |
| Area I                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 15.60                    | 1.40  | 2.20     |          | .05                        |
| Areas II and III                                                                                                                                                                                                                                                                                                                                                                                                                                          | 15.30                    | 1.40  | 2.20     |          | .05                        |
| SHEET FLOOR LAYERS:                                                                                                                                                                                                                                                                                                                                                                                                                                       |                          |       |          |          |                            |
| Area I                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 19.54                    | .68   | 1.33     |          | .18                        |
| Areas II and III                                                                                                                                                                                                                                                                                                                                                                                                                                          | 19.43                    | .79   | 1.00     |          | .21                        |
| SOFT FLOOR LAYERS:                                                                                                                                                                                                                                                                                                                                                                                                                                        |                          |       |          |          |                            |
| Area I                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 17.25                    | .90   | 2.00     |          | .10                        |
| Areas II and III                                                                                                                                                                                                                                                                                                                                                                                                                                          | 16.04                    | .70   | 1.65     |          | .15                        |
| SPRINKLER FITTERS                                                                                                                                                                                                                                                                                                                                                                                                                                         | 17.01                    | .65   | .95      |          | .00                        |

## FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

## LABORERS

| SURVEY CREWS:                                                                                                                                                                                            | Fringe Benefits Payments |        |          |          | Education and/or Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------|----------|----------|----------------------------|
|                                                                                                                                                                                                          | Basic Hourly Rates       | H & W  | Pensions | Vacation |                            |
| Party Chief                                                                                                                                                                                              | \$15.39                  | \$1.01 | \$ 3.00  |          | .05                        |
| Instrumentman                                                                                                                                                                                            | 14.15                    | 1.01   | 3.00     |          | .05                        |
| Head Chainman                                                                                                                                                                                            | 13.60                    | 1.01   | 3.00     |          | .05                        |
| Stakehop                                                                                                                                                                                                 | 13.60                    | 1.01   | 3.00     |          | .05                        |
| Rear Chainman                                                                                                                                                                                            | 13.17                    | 1.01   | 3.00     |          | .05                        |
| TERRAZZO WORKERS' and TILE SETTERS' Helpers                                                                                                                                                              | 12.83                    | .90    | 2.25     |          | .09                        |
| TILE SETTERS                                                                                                                                                                                             | 16.01                    | .90    | 2.45     |          | .09                        |
| RIGGERS; WELDERS: Receive rates for craft performing operation to which rigging or welding is incidental.                                                                                                |                          |        |          |          |                            |
| PAID HOLIDAYS:                                                                                                                                                                                           |                          |        |          |          |                            |
| A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.                                                                                                  |                          |        |          |          |                            |
| FOOTNOTE:                                                                                                                                                                                                |                          |        |          |          |                            |
| a. Employer contributes 8% of the basic hourly rate for over 5 years' service and 6% of the basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit. Six Paid Holidays: A through F. |                          |        |          |          |                            |
| LABORERS                                                                                                                                                                                                 |                          |        |          |          |                            |
| Group 1                                                                                                                                                                                                  | \$13.10                  | .60    | \$ 2.25  |          | .09                        |
| Group 2                                                                                                                                                                                                  | 13.27                    | .60    | 2.25     |          | .09                        |
| Group 3                                                                                                                                                                                                  | 13.31                    | .60    | 2.25     |          | .09                        |
| Group 4                                                                                                                                                                                                  | 13.34                    | .60    | 2.25     |          | .09                        |
| Group 5                                                                                                                                                                                                  | 13.38                    | .60    | 2.25     |          | .09                        |
| Group 6                                                                                                                                                                                                  | 13.39                    | .60    | 2.25     |          | .09                        |
| Group 7                                                                                                                                                                                                  | 13.44                    | .60    | 2.25     |          | .09                        |
| Group 8                                                                                                                                                                                                  | 13.52                    | .60    | 2.25     |          | .09                        |
| Group 9                                                                                                                                                                                                  | 13.77                    | .60    | 2.25     |          | .09                        |
| Group 10                                                                                                                                                                                                 | 13.80                    | .60    | 2.25     |          | .09                        |
| Group 11                                                                                                                                                                                                 | 13.88                    | .60    | 2.25     |          | .09                        |
| Group 12                                                                                                                                                                                                 | 13.90                    | .60    | 2.25     |          | .09                        |
| Group 13                                                                                                                                                                                                 | 13.91                    | .60    | 2.25     |          | .09                        |
| Group 14                                                                                                                                                                                                 | 14.02                    | .60    | 2.25     |          | .09                        |
| Group 15                                                                                                                                                                                                 | 14.14                    | .60    | 2.25     |          | .09                        |
| Group 16                                                                                                                                                                                                 | 14.27                    | .60    | 2.25     |          | .09                        |
| Group 17:                                                                                                                                                                                                |                          |        |          |          |                            |
| Class A                                                                                                                                                                                                  | 13.10                    | .60    | 2.25     |          | .09                        |
| Class B                                                                                                                                                                                                  | 13.29                    | .60    | 2.25     |          | .09                        |
| Class C                                                                                                                                                                                                  | 13.60                    | .60    | 2.25     |          | .09                        |
| Class D                                                                                                                                                                                                  | 14.16                    | .60    | 2.25     |          | .09                        |
| Class E                                                                                                                                                                                                  | 14.31                    | .60    | 2.25     |          | .09                        |
| Class F                                                                                                                                                                                                  | 14.55                    | .60    | 2.25     |          | .09                        |

## LABORERS

Group 1: Building Laborers; Carpenters Tenders; Material Handlers, and Hook Tenders; Form Strippers; Signalmen; Riggers; Sandblast Pot Tender; Saw Tenders; General Labor; Pump Men; Pit Men; Brush Cutters; Digging Diggers; Monolithic Workers; Dryer Men; Window Cleaner; Utilidork and Utilidork

Group 2: Base and Floor Machine Man

Group 3: Chafe Builders

Group 4: Concrete Labor including Vibratorman; Power Butty and Concrete Power Man; Curb and Gutterman; General Crew (including Plant Crew) Asphalt

Group 5: Pneumatic or Hammer Tools

Group 6: Stake Hopper; Graderman; Steampoint or Water Jet Operator

Group 7: Tank Cleaner

Group 8: Jackhammer Operator and Pavement Breaker; Chuck Tender (Wagon and Air Track Drills)

Group 9: Mason Tender and Mud Mixers

Group 10: Gunnite Operator; Pipelayers; Culvert and Multiplier; High Scales; Sloper (over 20 feet); Chain and Power Saws; Sack or bulk; Sewer Pipelayer; Sewer Caulkers; Timberman; All Monolithic Crews; Pipe Builders; Sandblasters

Group 11: Asphalt Rakers

Group 12: Tenders; Plasterers; Bricklayers; Cement Finisher; Burning and Cutting Torch (except intermittent torch work)

Group 13: Wagon Driller

Group 14: Timber Feller; Air Track Wagon Driller

Group 15: Chain Saw Filer

Group 16: High Riggers and Tree Topper; Powderman

Group 17: TUNNEL OR SHAFT

Class A: Topman and Bull Gang; Brakeman

Class B: Muckers; Laborers; Nippers

Class C: Chuck Tender

Class D: Wetberman

Class E: Miners; Shafts and Raises

Class F: Powderman



POWER EQUIPMENT OPERATORS

- Group 1
- Group 1-A
- Group 1-B
- Group 2
- Group 2-A
- Group 3
- Group 3-A
- Group 4

| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$16.00            | \$1.10                   | \$ 3.00  |          | .15                        |
| 17.13              | 1.10                     | 3.00     |          | .15                        |
| 15.70              | 1.10                     | 3.00     |          | .15                        |
| 15.51              | 1.10                     | 3.00     |          | .15                        |
| 15.11              | 1.10                     | 3.00     |          | .15                        |
| 15.05              | 1.10                     | 3.00     |          | .15                        |
| 14.65              | 1.10                     | 3.00     |          | .15                        |
| 14.03              | 1.10                     | 3.00     |          | .15                        |

Group 1: "A" Frame Trucks, Helicopters, Transporters, Deck Winches; double power drum; Back Filler; Batch Plant operators; batch and mixer over 200 yards per hour; Belcrete with power pack and similar conveyors; Bending Machines; Bulldozer, quad or HD 41 or similar; Cableways and Highlines, 3 yds. and under; Cleaning Machine; Coating Machine; Cranes; Shovels, Backhoes, Dragline, Cableways (Crawler, truck type, rubber-tired, crawler, floating (locomotive, wheeled, either 3 yds. or under or 150' boom, including jibs and under, or 45 tons and under - Hydraulic or transporters, all track or truck type - Hyster cat cranes and attachments, sidebooms under 45 tons); Derricks; Ditching or Trenching Machine (16" or over); Drilling Machines, core, cable, rotary and exploration; Hydraulic Ax and similar; Loaders (Forklifts with power boom and swing attachment); Mechanics, Welders, bodyman; Mixers (mobile type with height combination); Motor Patrol Grader (over Model 14 or similar types); Mucking Machines (mole, tunnel drill and/or shield); Operator on Dredges; Pile-driver Engineer, L. B. Foster, Puller or similar, paving breaker; Power plant, turbine operator, 300 k.w. and over (power plants or combination of power units over 300 k.w. on highway or airfield construction or quarry operations); Saurman-Bagley; Scrapers, Tournapulls, Caterpillar, Euclid and similar type equipment over 25 yds. through 40 yds.; Shot Blast Machine; Sub Grader (Gurries, C.M.I. and C.M.I. Roto mills and similar types); Tack Tractor; Truck mounted concrete pump; Waco Roto Machine; Hover Craft, flex craft, loadmaster, air cushion, terrain vehicle, helicopter transporter, cableways, rollington, dredge barge-cable, highline or cable car, camp maintenance engine, boat coxswains

POWER EQUIPMENT OPERATORS (Cont'd)

Group 1-A: Cableways and Highlines, over 3 yds.; Cranes; shovels, backhoes, draglines, clamshells (crawler, truck type, floating locomotive, wheeled, either over 3 yds. or over 150' boom, including jibs or over 45 tons; Tower cranes, Pecco, Lorain, Bucyrus and similar types); Hyster cat cranes and attachments, sidebooms 45 tons and over; Loaders over 4 yds.; Motor Patrol Grader (finish; when finishing to final grade, red, blue or similar hubs); Power Plants (1000 k.w. and over); Slip form paver, C.M.I. and similar types; Tournapulls, caterpillar, euclid scrapers and similar type equipment over 40 yds.

Group 1-B: Asphalt Roller; Bulldozers; Crushers; Finishing Machine Operator, concrete paving, sidewalk, curb and gutter machine; Loader, elevating belt type, euclid and similar types; Motor Patrol grader 14 and under; Scrapers 25 yds. and under; Spreaders; Blaw Knox, Cedarapids, Barber Greene, Sceded, Slurry Machine; McDowell Sno Cat

Group 2: Batch Plant Operators; batch and mixer 200 yds. per hour and under; Cement Hogs and concrete pump operators; Compressors; steel erection, including sand blasting, painting of same, piledriving; Conveyors (except as listed in group 1); Hoists on steel erection, Towermobiles and air tuggers; Loaders, elevating grader, dumper and similar; Locomotives; Rod and geared engines; Mixers Screening, washing plant; Sideboom (cradling rock drill); Skidder; Trenching Machine under 16"

Group 2-A: Service Oiler, Journeyman; Boiler-Fireman

Group 3: "A" Frame Trucks, Deck Winches; Single power drum; Bombardier (tack or tow rig); Boring Machine; Brooms, Power Wayne, Saginaw and similar types; Bump Cutter (Concut, Christenson or similar types; Compressors; excavating; Farm Tractor; Forklift, industrial type; Gin truck or winch truck with poles when used for hoisting; Hoists, air tuggers, elevators; Loaders (Elevating-Athey, Barber Greene and similar types); Forklifts of lumber carrier (on construction job sites); Forklifts with tower; Overhead and front end, under 24 yds.; Locomotives; Dinky (air, steam, gas and electric) spreaders; Mechanics, light duty; Mixers; concrete mixers and batch, 200 yds. per hour and under; Oil, Blower Distributors; Pipeline Dredge; Posthole diggers, mechanical; Pot Fireman (power agitated); Power plant, turbine operator, under 300 k.w.; Pumps; Puller kanyon, Water; Rollers, Tampers, Vibrators, all except asphalt Saws, concrete; Straightening Machine; Tow Tractor;

Group 3-A: Grade Checker, Stake Ropper; Rig Oiler, over 45 ton, over 3 yards, or over 150' boom; Drill Helper

Group 4: Rig Oiler (Advances to Group 3-A if over 45 tons or 3 yards or 150' boom); Parts and Equipment Coordinator; Swamper (on trenching machines or shovel type equipment); Spotter; Steam Cleaner

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

TRUCK DRIVERS

| Group    | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|----------|--------------------|--------------------------|----------|----------|----------------------------|
|          |                    | H & W                    | Pensions | Vacation |                            |
| Group 1  | \$14.06            | \$1.01                   | \$ 3.00  |          | .10                        |
| Group 2  | 14.12              | 1.01                     | 3.00     |          | .10                        |
| Group 3  | 13.59              | 1.01                     | 3.00     |          | .10                        |
| Group 4  | 14.44              | 1.01                     | 3.00     |          | .10                        |
| Group 5  | 14.84              | 1.01                     | 3.00     |          | .10                        |
| Group 6  | 15.15              | 1.01                     | 3.00     |          | .10                        |
| Group 7  | 15.44              | 1.01                     | 3.00     |          | .10                        |
| Group 8  | 15.75              | 1.01                     | 3.00     |          | .10                        |
| Group 9  | 16.06              | 1.01                     | 3.00     |          | .10                        |
| Group 10 | 16.37              | 1.01                     | 3.00     |          | .10                        |
| Group 11 | 16.88              | 1.01                     | 3.00     |          | .10                        |
| Group 12 | 16.99              | 1.01                     | 3.00     |          | .10                        |
| Group 13 | 17.29              | 1.01                     | 3.00     |          | .10                        |
| Group 14 | 14.58              | 1.01                     | 3.00     |          | .10                        |
| Group 15 | 13.31              | 1.01                     | 3.00     |          | .10                        |
| Group 16 | 13.74              | 1.01                     | 3.00     |          | .10                        |
| Group 17 | 14.42              | 1.01                     | 3.00     |          | .10                        |
| Group 18 | 14.68              | 1.01                     | 3.00     |          | .10                        |
| Group 19 | 14.95              | 1.01                     | 3.00     |          | .10                        |
| Group 20 | 15.22              | 1.01                     | 3.00     |          | .10                        |
| Group 21 | 15.39              | 1.01                     | 3.00     |          | .10                        |
| Group 22 | 14.36              | 1.01                     | 3.00     |          | .10                        |
| Group 23 | 13.48              | 1.01                     | 3.00     |          | .10                        |

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

TRUCK DRIVERS

Group 1: Buggymobile; Hyster Operators (handling bulk aggregate), Lumber Carrier

Group 2: Semi or truck and trailer; Dumpsters; Batch Trucks over 5 yards; Dump Trucks, over 5 yards up to and including 10 yards; Fuel Truck; Greasers of Grease Trucks; Flat Beds, dual rear axle; Ready Mix; Over 3 yards up to and including 5 yards; Water Wagon, semi; Water wagon, dual axle Winch Trucks; Flat bed including "A" Frame manufactures rating over 5 tons; Bull Lifts and Fork lifts over 5 tons; Front End Loader with Forks; Partman and outside expeditor; Bus Operator, over 30-passengers, Trail Truck Equipment; (All Terrain Vehicles, Form Distributor Truck, double axle; Loadmaster (air and water operations); Air cushion or similar type vehicle; Fire Trucks - double axle; Vacuum Truck; Vacuum Truck Sweepers - Dual axle; Higgers; Combination Truck - fuel and grease; Greasers; Hydro Seeders-Dual Axle

Group 3: Batch Truck up to and including 5 yards; Dump Truck (including Rockbuggy and Trucks with pumps) up to and including 5 yards; Flat beds, single rear axle; Water wagon, single axle; Winch Truck, Flat bed including "A" Frame manufactured rating 5 tons and under; Bull Lifts and Fork lifts up to and including 5 tons; Bus Operator, up to 30 passengers; Form Distributor Truck, single axle, Hydro seeder, single axle, team drivers (horses, mules and similar equipment); Vacuum trucks and Truck Sweepers - single axle; Fire Trucks - single axle; Ambulance

Group 4: Dump Trucks over 10 yards up to and including 20 yards; Tire service Many Lowbed heavy-duty Trailer; Oiler distributor drivers; Ready Mix; Compactor (when pulled by rubber-tired equipment); Lowboys including attached trailers and jeeps

Group 5: Dump Trucks over 20 yards up to and including 30 yards

Group 6: Dump Trucks over 30 yards up to and including 40 yards

Group 7: Dump Trucks over 40 yards up to and including 50 yards

Group 8: Dump trucks over 50 yards up to and including 60 yards

Group 9: Dump trucks over 60 yards up to and including 70 yards

Group 10: Dump Trucks over 70 yards up to and including 80 yards

Group 11: Dump Trucks over 80 yards up to and including 90 yards



TRUCK DRIVERS (Cont'd)

- Group 12: Dump Trucks over 90 yards up to and including 100 yards
- Group 13: Dump Trucks over 100 yards (above scales to be paid on actual water level measurements)
- Group 14: Turn-O-Wayner DM-10 when not self-loading
- Group 15: Gravel Spreader Box Operator on Truck; Pickup (pilot Cats all light-duty vehicles); Warehouseman Class 2; Farm type rubber-tired tractor (material hauling or pulling wagons); Sweepers
- Group 16: Ready Mix: Up to and including 3 yards
- Group 17: Ready Mix: Over 3 yards up to and including 7 yards
- Group 18: Ready Mix: Over 7 yards up to and including 9 yards
- Group 19: Ready Mix: Over 9 yards up to and including 12 yards
- Group 20: Ready Mix: 13 yards and over
- Group 21: Ready Mix, semi with double bowl mixer
- Group 22: Water Wagon, when pulled by Euclid or similar type equipment
- Group 23: Warehouse - Class 1

SUPERSTANDARD DECISION

STATE: Ohio  
COUNTY: Lucas  
DECISION NO.: ON78-2163  
DATE: Date of Publication  
Superstandard Decision No. ON78-2163 dated November 13, 1978 in 43 FR 52656  
DESCRIPTION OF WORK: Building and Residential Construction

|                                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                        |                    | H & W                    | Pensions | Vacation |                            |
| ASBESTOS WORKERS                                       | \$13.13            | .50                      | 1.30     |          | .04                        |
| BOILERMAKERS                                           | 13.575             | 1.075                    | 1.00     |          | .03                        |
| BRICKLAYERS; Marble Setters; & Stonemasons             | 12.425             | 1.06                     | 1.30     |          | .02                        |
| CARPENTERS; Millwrights; & Piledriversmen              | 12.99              | 1.06                     | .75      |          | .05                        |
| CEMENT MASONS                                          | 14.14              | .60                      |          |          | .02                        |
| ELECTRICIANS                                           | 13.80              | .65                      | 324.55   |          | .12                        |
| Commercial                                             | 7.59               | .65                      | 324.55   |          | .12                        |
| Residential                                            | 12.355             | .745                     | .56      | a+b      | .035                       |
| ELEVATOR CONSTRUCTORS                                  | 702JR              | .745                     | .56      | a+b      | .035                       |
| Helpers                                                | 50ZJR              |                          |          |          |                            |
| Helpers (Prob.)                                        | 11.825             | .55                      | 1.00     |          | .01                        |
| GLAZIERS                                               | 12.86              | 1.06                     | 1.22     |          | .05                        |
| IRONWORKERS                                            | 13.05              | 1.06                     | .10      |          | .01                        |
| LATHERS                                                |                    |                          |          |          |                            |
| LINE CONSTRUCTION:                                     |                    |                          |          |          |                            |
| Linemen                                                | 14.26              | .50                      | 32       | c        | .52                        |
| Cable Splicers                                         | 14.51              | .50                      | 32       | c        | .52                        |
| PAINTERS:                                              |                    |                          |          |          |                            |
| Commercial:                                            |                    |                          |          |          |                            |
| Brush; Drywall Tapers; Paper-hangers                   | 11.28              | 1.06                     | 1.10     |          |                            |
| Bridge; Railings; Powerhouse;                          |                    |                          |          |          |                            |
| Refinery Tanks                                         | 11.53              | 1.06                     | 1.10     |          |                            |
| Sandblasting; Spray; Pressure                          |                    |                          |          |          |                            |
| Cleaning                                               | 11.83              | 1.06                     | 1.10     |          |                            |
| Residential Work                                       | 10.14              | 1.06                     | 1.10     |          |                            |
| PLASTERERS                                             | 13.80              | .60                      |          |          | .01                        |
| PLUMBERS; Steamfitters; Pipe-fitters                   | 13.63              | .80                      | .85      |          | .09                        |
| ROOFERS                                                | 12.63              | 1.06                     | 1.00     |          | .02                        |
| SHEET METAL WORKERS                                    | 12.655             | 1.06                     | 1.36     |          | .045                       |
| SOFT FLOOR LAYERS:                                     |                    |                          |          |          |                            |
| Commercial                                             | 11.32              | 1.06                     | .75      |          | .04                        |
| Residential                                            | 10.30              | 1.06                     | .75      |          | .04                        |
| SPRINKLER FITTERS                                      | 12.75              | .75                      | 1.05     |          | .08                        |
| TERRAZZO WORKERS; Tile Setters                         | 12.48              | 1.06                     | .50      |          |                            |
| TERRAZZO WORKERS' FINISHERS; & Tile Setters' Finishers | 11.00              | 1.06                     | .40      |          | .50                        |

DECISION NO. ON78-2163

PAID HOLIDAYS:  
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;  
E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES

- A. Seven paid holidays: A through F, & Day after Thanksgiving
- B. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
- C. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

| Fringe Benefits Payments                                                                                                                                                                                                                                                                     | Education and/or Appr. Tr. |          |          |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------|----------|-----|
|                                                                                                                                                                                                                                                                                              | H & W                      | Pensions | Vacation |     |
| LAWRENS:<br><br>Unskilled laborers<br>Mason Tenders<br>Gunnite pot men; Mortar mixers<br>Concrete pump nozzle men; All<br>power driven tools; Power<br>bugies<br>Pipe layers; Bellmen; Bottom<br>men for fire brick work only<br>Nozzle operators for Gunnite<br>work<br>Plasterers' Tenders | Misc<br>Hourly<br>Rates    |          |          |     |
|                                                                                                                                                                                                                                                                                              |                            | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | \$10.86                    | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | 10.99                      | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | 11.06                      | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | 11.015                     | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | 11.115                     | .70      | .70      | .11 |
|                                                                                                                                                                                                                                                                                              | 11.77                      | .70      | .70      | .11 |
| 10.88                                                                                                                                                                                                                                                                                        | .70                        | .70      | .11      |     |

DECISION NO. ON78-2163

POWER EQUIPMENT OPERATORS

|         | Basic Hourly Rates | Fringe Benefits Payments |          |          |         | Education and/or Appr. Tr. |
|---------|--------------------|--------------------------|----------|----------|---------|----------------------------|
|         |                    | H & W                    | Pensions | Vacation | Medical |                            |
| GROUP A | \$12.89            | .66                      | 1.00     |          |         | .11                        |
| GROUP B | 12.73              | .66                      | 1.00     |          |         | .11                        |
| GROUP C | 12.38              | .66                      | 1.00     |          |         | .11                        |
| GROUP D | 11.57              | .66                      | 1.00     |          |         | .11                        |
| GROUP E | 11.24              | .66                      | 1.00     |          |         | .11                        |
| GROUP F | 9.28               | .66                      | 1.00     |          |         | .11                        |

GROUP A - A-frames; rotary mills used on caisson work for foundations and sub-structure work; boiler or compressor operator mounted on crane (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derricks (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls, helicopter operator and helicopter winch operator when hoisting building materials; hoos (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with boom; panelboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.

GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; mndloaders; Kohlman type loaders (dirt loading); lead greaseman; mucking machines; power grader; power scoops; power scrapers; push cat.

GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing well points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 24" and under.

GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.

GROUP E - Backfillers & tampers; batch plant; bar and joint installing machines; bullfloats; burlap and curing machines; clefplanes; concrete spreading mach.; crushers; deck hands; drum firemen (asphalt); farm type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over 1/2 discharge; hydro seeders; self-propelled power spreader; self-propelled sub-grader; tire repairmen; tractors pulling sheeps foot roller or grader;

GROUP F - Giller; helper; signalman; inboard & outboard motor boat launch; light vibratory compactors (with integral power)

GROUP P - Giller; helper; signalman; inboard & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure); pumps under 4" discharge; submersible pumps under 4" discharge.



## SUPERSEDES DECISION

STATE: ONTIO COUNTY: FULTON  
 DECISION NO.: 0178-2169 DATE: Date of Publication  
 Supersedes Decision No. 0178-2147, dated November 13, 1978 in 43 FR 52656  
 DESCRIPTION OF WORK: Building Construction (Does not include family homes & garden type apartments up to and including 4 stories)

|                                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|--------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                        |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS                                       | \$13.13            | .50                      | 1.30     |          | .04                        |
| BOILERMAKERS                                           | 13.575             | 1.075                    | 1.00     |          | .03                        |
| BRICKLAYERS; Marble setters; Stonemasons:              |                    |                          |          |          |                            |
| Type of Amboy, Swan Creek & Fulton                     | 12.125             | 1.06                     | 1.30     |          | .01                        |
| Remainder of Co.                                       | 11.22              | 1.06                     | .50      |          |                            |
| CARPENTERS; Millwrights; & Piledrivers                 | 12.99              | 1.06                     | .75      |          | .05                        |
| CEMENT MASONS                                          | 14.14              | .60                      | 344.55   |          | .38                        |
| ELECTRICIANS                                           | 13.80              | .65                      | .56      | abb      | .035                       |
| ELEVATOR CONSTRUCTORS' HELPER                          | 12.355             | .745                     | .56      | abb      | .035                       |
| ELEVATOR CONSTRUCTORS' HELPERS (PROB.)                 | 7064R              |                          |          |          |                            |
| GLAZIERS                                               | 5064R              | .55                      | 1.00     |          | .01                        |
| IRONWORKERS                                            | 11.825             | 1.06                     | 1.22     |          | .05                        |
| LATHERS                                                | 12.86              | 1.06                     | .10      |          | .01                        |
| LINE CONSTRUCTION:                                     |                    |                          |          |          |                            |
| Linenmen                                               | 13.05              | 1.06                     |          |          |                            |
| Cable splicers                                         | 14.26              | .50                      | 3%       | a        | 3%                         |
| PAINTERS:                                              | 14.51              | .50                      | 3%       | a        | 3%                         |
| Brush; Drywall tapers; & Paperhangers                  |                    |                          |          |          |                            |
| Bridge; Railings; Powerhouses;                         | 11.28              | 1.06                     | 1.10     |          |                            |
| Refinery tanks                                         | 11.53              | 1.06                     | 1.10     |          |                            |
| Sandblasting; Spray; Pressure Cleaning                 |                    |                          |          |          |                            |
| PLASTERERS                                             | 11.83              | 1.06                     | 1.10     |          | .01                        |
| PLUMBERS; Steamfitters; & Pipefitters                  | 13.80              | .60                      |          |          |                            |
| ROOFERS                                                | 13.63              | .80                      | .85      |          | .09                        |
| SHEET METAL WORKERS                                    | 12.63              | 1.06                     | 1.00     |          | .02                        |
| SOFT FLOOR LAYERS                                      | 12.655             | 1.06                     | 1.36     |          | .015                       |
| SPRINKLER FITTERS                                      | 11.32              | 1.06                     | .75      |          | .04                        |
| TERRAZZO WORKERS; & Tile setters                       | 12.75              | .75                      | 1.05     |          | .08                        |
| TERRAZZO WORKERS' FINISHERS; & Tile setters' finishers | 12.40              | 1.06                     | .50      |          |                            |
|                                                        | 11.00              | 1.06                     | .40      | .50      |                            |

## NOTICES

- PAID HOLIDAYS:  
 A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;  
 E-Thanksgiving Day; F-Christmas Day
- FOOTNOTES:  
 a. Seven paid holidays: A through F, & Day after Thanksgiving  
 b. Employer contributes 64 of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 64 of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.  
 c. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

| LABORERS:                                                    | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|--------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                              |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| Unskilled laborers                                           | \$9.27             | .70                      | .70      |          | .10                        |
| Mason tenders; Gunite pot men                                | 9.39               | .70                      | .70      |          | .10                        |
| All power driven tools & hammers; burners; Torchmen; Mossmen |                    |                          |          |          |                            |
| for concrete pump                                            | 9.42               | .70                      | .70      |          | .10                        |
| Plasterers' tenders                                          | 9.445              | .70                      | .70      |          | .10                        |
| Nozzle operators for gunite work                             | 9.92               | .70                      | .70      |          | .10                        |
| Belimen; Bottom men; Brick expeditor                         | 9.505              | .70                      | .70      |          | .10                        |

FEDERAL REGISTER, VOL. 43, NO. 251—FRIDAY, DECEMBER 29, 1978

## DECISION NO. 0178-2169

## POWER EQUIPMENT OPERATORS

|         | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|---------|--------------------|--------------------------|----------|----------|----------------------------|
|         |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP A | \$12.89            | .66                      | 1.00     |          | .11                        |
| GROUP B | 12.73              | .66                      | 1.00     |          | .11                        |
| GROUP C | 12.38              | .66                      | 1.00     |          | .11                        |
| GROUP D | 11.57              | .66                      | 1.00     |          | .11                        |
| GROUP E | 11.24              | .66                      | 1.00     |          | .11                        |
| GROUP F | 9.28               | .66                      | 1.00     |          | .11                        |

- GROUP A - A-frames; rotary drills used on chassis work for foundations and sub-structure work; boiler or compressor operator mounted on train (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derricks (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls; helicopter operator and helicopter winch operator when hoisting builders materials; hoos (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with boom; panelboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.
- GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; endloaders; Kohlman type loaders (dirt loading); lead grasper; mucking machines; power grader; power scoops; power scrapers; push cat.
- GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing wall points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 14" and under.
- GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.
- GROUP E - Backfillers & tampers; hatch plant; bar and joint installing machines; ballfloats; turlop and curing machines; clefplumes; concrete spreading mach.; crushers; duck hounds; drum firemen (asphalt); form type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over 4" discharge; hydro seeders; self-propelled power spreader; half-propelled sub-grader; tire repairmen; tractors pulling sheeps foot roller or grader; vibratory compactors (with integral power).
- GROUP F - Oiler; helper; signalman; inward & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure); pumps under 4" discharge; submersible pumps under 4" discharge.

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## SUPERSEDES DECISION

STATE: Washington COUNTIES: Statewide  
 DECISION NUMBER: WA78-5133 DATE: Date of Publication  
 Supersedes Decision No. WA78-5105 dated June 30, 1978, in 43 FR 25738

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments, up to and including 4 stories), heavy and highway construction and dredging.

|                                                                                                                                                                                                                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                                                                                                                                                        |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS:<br>Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Okanogan, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom and Yakima Counties | \$ 14.27           | .62                      | \$ 1.30  |          | .03                        |
| Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties                                                                                                                                                 | 14.27              | .60                      | 1.30     |          | .14                        |
| Remaining Counties                                                                                                                                                                                                                     | 13.54              | .62                      | 1.30     |          | .04                        |
| BOILERMAKERS:<br>BRICKLAYERS:<br>Adams (except City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, Grand Coulee Dam Area in Okanogan County and Whitman Counties                             | 12.76              | 1.075                    | 1.00     | 1.00     | .03                        |
| Menton, Franklin and Walla Walla Counties                                                                                                                                                                                              | 11.94              | .80                      | .70      |          | .05                        |
| Chelan, Douglas and Okanogan (except area of Grand Coulee Dam)                                                                                                                                                                         | 11.81              | .65                      | .70      |          |                            |
| Clallam, Island, Jefferson, King, Kitsap, Snohomish and Skagit (south of the Cities of Burlington, Sedro-Woolley and Concrete) Counties                                                                                                | 9.50               | .55                      | .50      |          |                            |
| Clark, Cowlitz, Pacific (Southern portion), Skamania, Wahkiakum Counties and ten mile strip bordering the Columbia River in Klickitat County                                                                                           | 12.41              | .80                      | 1.15     |          | .11                        |
| Grant County and the portion of Adams County including the City of Othello                                                                                                                                                             | 12.94              | .85                      | .85      |          | .15                        |
| Kittitas, Yakima and Klickitat (except a ten mile strip bordering the Columbia River) Counties                                                                                                                                         | 12.50              | .80                      | .80      |          |                            |
|                                                                                                                                                                                                                                        | 12.25              | .75                      | 1.00     |          |                            |

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| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$ 12.37           | .80                      | \$ 1.20  |          | .06                        |
| 12.82              | .80                      | .85      |          |                            |
| 11.59              | .78                      | .85      |          | .075                       |
| 11.74              | .78                      | .85      |          | .075                       |
| 11.84              | .78                      | .85      |          | .075                       |
| 11.99              | .78                      | .85      |          | .075                       |
| 12.09              | .78                      | .85      |          | .075                       |
| 11.86              | .60                      | .80      |          | .02                        |
| 11.98              | .60                      | .80      |          | .02                        |
| 12.01              | .60                      | .80      |          | .02                        |
| 12.38              | .60                      | .80      |          | .02                        |
| 12.03              | .60                      | .80      |          | .02                        |
| 12.04              | .60                      | .80      |          | .02                        |
| 12.08              | .60                      | .80      |          | .02                        |

BRICKLAYERS: (Cont'd)  
Grays Harbor, Lewis, Mason, Northern portion of Pacific, Pierce and Thurston Counties  
San Juan, Skagit (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof), and Whatcom Counties  
CARPENTERS:  
All Counties and parts of Counties east of the 120th Meridian (except those parts of Kittitas, Klickitat and Yakima east of the 120th Meridian)  
Carpenters  
Piledriver; Floor Sanders; Saw Filers; Stationary Power Woodworking Tool Operator  
Boon Men; Carpenters (creosoted material)  
Piledriver (creosoted material)  
Millerwrights & Machine Erectors  
All Counties and parts of Counties west of the 120th Meridian except Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties  
Carpenters and Drywall Applicators  
Carpenters on Creosoted material  
Sawfilers; Stationary power saw; Floor finisher; Floor sander layer; Shingles; Floor sander and other stationary power woodworking tools  
Millerwrights & Machine Erectors  
Piledrivers; Bridge, dock and wharf builders  
Acoustical Workers  
Boonmen

| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$ 11.95           | .94                      | .70      |          | .09                        |
| 12.20              | .94                      | .70      |          | .09                        |
| 11.00              | .85                      | .76      | .60      | .10                        |
| 11.15              | .85                      | .76      | .60      | .10                        |
| 14.62              | .83                      | 3%+.40   |          | .02                        |
| 15.02              | .83                      | 3%+.40   |          | .02                        |
| 14.27              | .83                      | 3%+1.00  |          | .02                        |
| 15.09              | .83                      | 3%+1.00  |          | .02                        |
| 13.92              | .83                      | 3%+1.00  |          | .02                        |
| 15.31              | .83                      | 3%+1.00  |          | .02                        |
| 15.08              | .85                      | 3%+1.10  |          | .05                        |
| 16.58              | .85                      | 3%+1.10  |          | .05                        |
| 14.55              | .90                      | 3%+1.00  |          | .05                        |
| 15.30              | .90                      | 3%+1.00  |          | .05                        |
| 14.30              | .90                      | 3% 5%    | 5%       | .02                        |
| 15.73              | .90                      | 3% 5%    | 5%       | .02                        |
| 13.86              | .88                      | 3%+.85   | 8%       | .07                        |
| 15.25              | .88                      | 3%+.85   | 8%       | .07                        |

CEMENT MASONS: (Cont'd)  
Island, Skagit, Snohomish and Whatcom Counties  
Cement Masons  
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman  
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties  
Cement Masons  
Composition materials and power machinery  
ELECTRICIANS:  
Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens and Whitman Counties  
Electricians  
Cable Splicers  
Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla and Yakima Cos.  
Electricians  
Cable Splicers  
Chelan, Douglas, Grant and Okanogan Counties  
Electricians  
Cable Splicers  
Clallam, Jefferson, King and Kitsap Counties  
Electricians  
Cable Splicers  
Clark, Klickitat and Skamania Counties  
Electricians  
Cable Splicers  
Cowlitz and Wahkiakum Counties  
Electricians  
Cable Splicers  
Grays Harbor, Lewis, Mason, Pierce, Pacific & Thurston Cos.  
Electricians  
Cable Splicers

| Basic Hourly Rates | Fringe Benefits Payments |                |                | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------------|----------------|----------------------------|
|                    | H & W                    | Pensions       | Vacation       |                            |
| \$ 11.28           | .60                      | .95            | .50            | .04                        |
| 11.38              | .60                      | .95            | .50            | .04                        |
| 11.43              | .60                      | .95            | .50            | .04                        |
| 11.48              | .60                      | .95            | .50            | .04                        |
| 11.53              | .60                      | .95            | .50            | .04                        |
| 10.93              | ZONE A \$11.58           | ZONE B \$11.83 | ZONE C \$12.28 | ZONE D \$12.73             |
| 11.08              | 11.73                    | 11.98          | 12.43          | 12.88                      |
| 11.38              | 12.03                    | 12.28          | 12.73          | 13.18                      |
| \$ .75             | Pen.                     | \$1.00         | App. Tr.       | \$ .05                     |
| 11.53              | .70                      | 1.00           | .50            | .02                        |
| 11.78              | .70                      | 1.00           | .50            | .02                        |

CARPENTERS: (Cont'd)  
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties  
Carpenters; Form Strippers; Manhole Builders; Acoustical Applicators, Drywall  
Piledrivermen, bridge, dock and wharf builders  
Floor Layers; Floor finishers; Stationary power saw operator  
Boonmen  
Millerwrights; Machine Erectors  
CEMENT MASONS:  
Adams, Asotin, Benton, Chelan, Garfield, Grant, Kittitas (except for western portion lying one mile west of the City of Easton), Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties  
Cement Masons  
Power Troweling Machine Gunnite Operator  
Power Tool Operator (grinding, bushing or toxic material)  
FRINGE BENEFITS: H&W  
SEE Page following TRUCK DRIVERS for ZONE DEFINITIONS.

CEMENT MASONS:  
Clallam, Grays Harbor, Jefferson, King, Kitsap, Kittitas (western portion lying one mile west of the City of Easton), Lewis, Mason, Pacific (Northern portion), Pierce and Thurston Cos.  
Cement Masons  
Composition, Color, Mastic, Trowel Machine; Grinder, Power Tool, Gunnite Nozzleman

| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$ 15.77           | .90                      | 3%+.40   |          | .04                        |
| 17.35              | .90                      | 3%+.40   |          | .04                        |
| 7.30               | .43                      |          |          | .02                        |
| 12.965             | .745                     | .35      | 4%+a     | .02                        |
| 14.41              | .895                     | .69      | a        | .02                        |
| 13.405             | .895                     | .56      | a        | .025                       |
| 11.20              | .35                      | .30      | b+.43    |                            |
| 10.77              | .40                      | .55      | .66      |                            |
| 8.25               | .40                      | .70      | .59      | .02                        |

ELECTRICIANS: (Cont'd)  
Island, San Juan, Skagit, Snohomish and Whatcom Counties  
Electricians  
Cable Splicers  
ELECTRONIC TECHNICIANS:  
(Installation and repair of low-voltage communication and alarm systems, excluding any work under the jurisdiction of a Journeyman wireman):  
Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties  
Journeyman Installer  
ELEVATOR CONSTRUCTORS:  
Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla and Whitman Counties  
Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom and Yakima Counties  
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Cos.  
GLAZIERS:  
Adams (northeastern portion), Lincoln eastern half; Pend Oreille, Spokane and Stevens Counties  
Adams (southeastern portion), Benton, Columbia, Franklin and Walla Walla Counties  
Adams (Southwestern corner), Chelan, Douglas, Grant, Lincoln, (western half) and Okanogan Cos.











## LINE CONSTRUCTION

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | H & W                    | Pensions | Vacation |  |                            |
| WILE SETTERS: (Cont'd)<br>Grant County and that portion of Adams County including the City of Othello<br>Grays Harbor, Lewis, Mason, Pierce and Thurston Counties<br>San Juan, Skagit (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof) and Whatcom Counties                                                                                                                                                                                                                                                    |                          |          |          |  | .06                        |
| WELDERS: Receiving rate prescribed for craft performing operation to which welding is incidental.<br>*where Pacific County is stated as "Northern Portion" or "Southern Portion" such areas are defined as follows:<br>Pacific (Northern portion) - North of Wahkiakum County Northern boundary extended due West to the Pacific Ocean<br>Pacific (Southern portion) - South of Wahkiakum County Northern boundary extended due West to the Pacific Ocean.                                                                                    | .40<br>.80<br>.80        | 1.20     |          |  |                            |
| PAID HOLIDAYS:<br>A-New Year's Day; B-Memorial Day; C-Independence Day;<br>D-Labor Day; E-Thanksgiving Day; F-Christmas Day.                                                                                                                                                                                                                                                                                                                                                                                                                  | 12.82                    | .80      | .85      |  |                            |
| FOOTNOTES:<br>a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays:<br>b. Two weeks' vacation with pay after 1 year employment. also seven Paid Holidays: A through G plus Washington's Birthday.<br>c. 4% of all gross wages to be placed to the credit of the employee with less than one year's service - 6% of all gross wages to be placed to the credit of the employee with more than one year of service. |                          |          |          |  |                            |

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## LABORERS (AREA 1)

All Counties and portions of Counties East of the 120th Meridian

| GROUP NO. | ZONE 1  | ZONE 2  | ZONE 3   | ZONE 4  | ZONE 5   |
|-----------|---------|---------|----------|---------|----------|
| 1         | \$ 9.45 | \$10.10 | \$ 10.35 | \$10.80 | \$ 11.15 |
| 2         | 9.70    | 10.35   | 10.60    | 11.05   | 11.40    |
| 3         | 9.95    | 10.60   | 10.85    | 11.30   | 11.75    |
| 4         | 10.20   | 10.85   | 11.10    | 11.55   | 12.00    |
| 5A        | 10.15   | 10.80   | 11.05    | 11.50   | 11.85    |
| 5B        | 10.20   | 10.85   | 11.10    | 11.55   | 12.00    |
| 5C        | 10.60   | 11.25   | 11.50    | 11.95   | 12.40    |
| 5D        | 10.65   | 11.30   | 11.55    | 12.00   | 12.45    |

FRINGE BENEFITS:  
Health and Welfare .83  
Pensions .98  
Apprenticeship Training .05

NOTE: See ZONE DEFINITIONS Following TRUCK DRIVERS Classifications  
For Building Construction use Base Rates (ZONE A)  
Zone rates apply to Heavy and Highway Construction ONLY

LABORERS (AREA 2)  
(All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County)

Group 1  
Group 2  
Group 3  
Group 4

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$ 9.92            | .95                      | \$ 1.10  |          |  | .08                        |
| 10.26              | .95                      | 1.10     |          |  | .08                        |
| 10.40              | .95                      | 1.10     |          |  | .08                        |
| 10.50              | .95                      | 1.10     |          |  | .08                        |

LABORERS (AREA 3)  
(All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County)

Group 1  
Group 2  
Group 3  
Group 4

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|--|----------------------------|
|                    | H & W                    | Pensions | Vacation |  |                            |
| \$ 9.92            | .95                      | \$ 1.10  |          |  | .08                        |
| 10.26              | .95                      | 1.10     |          |  | .08                        |
| 10.40              | .95                      | 1.10     |          |  | .08                        |
| 10.50              | .95                      | 1.10     |          |  | .08                        |



LABORERS (AREA 1)

All Counties and portions of Counties East of the 120th Meridian

Group 1: Brush Hog Feeders; Concrete Crewman (to include: stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, signaling, handling the nozzle of squeegee or similar machine - 6 inches and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all materials); sign men; Fence Erector (to include: guard rail, guide and reference posts, sign posts, and right-of-way markers); Flagman; General Laborer; GROUT Machine Header Tender; Nipper; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoesman (water nozzle); Timber Bucker and Faller (by hand); Tractor Laborer (Railroad); Truck Loader; Well-point Man; Window Cleaner

Group 2: Asphalt Baker; Asphalt Roller, walking; Carpenter Tender; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman; Non-mechanical; Driller Helper (when required to move and position machine); Form Cleaning Machine Feeder; Stackers; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzlemans (to include: squeegee and flow-crete nozzle); Nozzlemans, water, air or steam; Pavement Breaker; Pipe-layer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Helper; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Railroad Equipment, power driven, except dual mobile power spicer or puller; Railroad Power Spiker of Puller, dual mobile; Rodder and Spreader; Sandblast Tailhoesman; Tanager (to include: operation of Barco, Essex and similar tamperas, and pavement breakers); Trencher, Shavnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven

Group 3: Air Trac Drill; Brush Machine (to include: horizontal construction joint clean-up brush machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Sealers; Rod Carrier; Laser Beam Operator (to include: grade checkers and Elevation control); Monitor Operator track or similar mounting); Mortar Mixer; Nozzlemans (to include: jet blasting Nozzlemans, over 1,200 lbs., jet blast machine, power propelled, sandblast nozzle); Pipelayer (to include: working topmen, caulker, collarman, jointer, mortarmen, riggers, jacket, shorer, valve or meter installer); Pipewraper; Vibrator, 4 inches and over

Group 4: Drills with dual Masts; Powderman; Welder, electric, manual or automatic

Group 5: Tunnel and Shaft, free air

Class A: Bull Gang, Pump Crete Crewman including distribution pipe, Assembly and dismantling and Nipper

Class B: Brakeman, Dumpman

Class C: Miner and Nozzlemans for concrete and Laser Beam Operator in Tunnels

Class D: Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts

LABORERS (AREA 2)

All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County

Group 1: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burners; Car and Truck Loader; Carpenter Helper; Cement Handler; Changehouse or Dry Shack; Choker Setter; Clean up Laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crush Feeder; Curing Laborer; Demolition, wrecking and moving; Ditch Digger; Drilman; Dumpman; Elevator Feeders; Epoxy Technician; Faller and Bucker, hand; Fence Laborer; Fine Graders; Flagman; Form Setter; GROUT Machine Header Tender; Header Laborer and Guardrail Erector; House Wrecker; Landscaping or Planting; Material Yard Man (including electrical); Nipper-swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signalman; Skipman; Sloper Sprayman; Stockpiler; Toolroom Man (at job site); Truck Laborer; Truck Sprayer; Window Cleaner

Group 2: Air, gas or electric Vibrating Screed; Anchor Machine; Ballast Regulator Machine; Chippers; Choker Splicer; Chuck Tender; Clay Power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including post tension beams; Jackhammer; Multiple Tamper; Pavement Breaker; Pipe Pot Tender; Pipe Wraper; Powderman Helper; Power Jacks; Power Wheelbarrow or Buggy; Railroad Spike Puller; Ribboy Setter; head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Sealing Scaffold or Boatwain Chair over water or 25 ft. in height; Tanager, multiple and self-propelled; Tanager and similar electric and air operator tools; Topman-tailman; Track Liners; Vibrator; Wagon Driller and Air Trac Helper Wall Point Laborer

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Helper; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scalier; Laser Beam Operator; Manhole Builder; Mortarman and Hodcarrier; Nozzlemans (concrete and rock, sandblast, gunnite, shotcrete); Water Blaster; Pipelayer and Caulker; Powderman; Baker, asphalt; Spreader (carries grade with rodder); Timberman, sewer; Tugger Operator; Vibrator, 4" and over; Wagon Driller and Air Trac Operator

Group 4: Caisson Worker; Laser Beam Operator (tunnel); Powderman; Re-timberman

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LABORERS (AREA 3)

Clark, Cowlick, Klickitat, Skamania, Wankarem and the Southern portion of Pacific, Counties

| Group No. | ZONE 1 | ZONE 2  | ZONE 3  | ZONE 4  | ZONE 5  | ZONE 6   |
|-----------|--------|---------|---------|---------|---------|----------|
| 1         | 98.93  | \$ 9.33 | \$ 9.68 | \$ 9.93 | \$10.18 | \$ 10.43 |
| 2         | 9.28   | 9.68    | 10.03   | 10.28   | 10.53   | 10.78    |
| 3         | 9.58   | 9.98    | 10.33   | 10.58   | 10.83   | 11.08    |
| 4         | 9.83   | 10.23   | 10.58   | 10.83   | 11.08   | 11.33    |

FRINGE BENEFITS:  
Health and Welfare \$ .95  
Pension 1.10  
Vacation .65  
Apprenticeship Training .10

NOTE: See ZONE DEFINITIONS FOLLOWING TRUCK DRIVERS Classifications

|                                                                                                                                   | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                                                   |                    | H & W                    | Pensions | Vacation |                            |
| LABORERS (AREA 4)<br>(Those portions of Chelan, Douglas, Kittitas, Okanogan and Yakima Counties lying West of the 120th Meridian) |                    |                          |          |          |                            |
| Group 1                                                                                                                           | \$ 9.82            | .95                      | \$ 1.10  |          | .08                        |
| Group 2                                                                                                                           | 10.16              | .95                      | 1.10     |          | .08                        |
| Group 3                                                                                                                           | 10.30              | .95                      | 1.10     |          | .08                        |
| Group 4                                                                                                                           | 10.40              | .95                      | 1.10     |          | .08                        |

LABORERS (AREA 3)

Clark, Cowlick, Klickitat, Skamania, Wankarem and the Southern portion of Pacific, Counties

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving laborers; Drillers Helpers; Dumpers, road oiling crew; Dumpman (for grading crew); Elevator Feeders; Fence Builder (including guard rail, median rail, reference post, guide post, right-of-way marker); Fine Graders; Form Strippers (not swinging stages); Landscaping or Planting Laborers; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Helper; Pittsburgh Chipper Operator or similar types Railroad Track Laborers; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipmen; Slopers Sprayman; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bull Gang (above ground); Weight Man - Crusher (aggregate when used)

Group 2: Applicator (including pot tender for same) Applying protective Material by hand or nozzle on utility lines or storage tanks on projects; Brush Cutters (power saw); Burner; Choker Splicer; Clay, Power Spreader and similar types; Clean-up Nozzlemans-Greencutter (concrete, rock, etc.); Concrete Power Buggyman; Crusher Feeder; Demolition and Wrecking charred materials; Grade Checker; Gunite Nozzlemans Tender; Gunite and Sand Blasting Post Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers, Ribbon Setter, head, rip Rap Man (head hand place, Sand Blasting (wet), Stake Setter, Tunnel-Muckers, Brakemen, Concrete Crew, Bull Gang (underground)

Group 3: Asphalt Bakers; Bit Grinder; Drill Doctor; Drill Operators, Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted Drills, and other similar types; Concrete Saw Operator; Gunite Nozzlemans; High Scaliers, Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying) - Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powderman; Power Saw Operators (buckling and falling); Pumpcrete Nozzlemans; Sandblasting (dry); Sewer Pipe Layers; Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks; Tugger Operator; Tunnel Chuck Tenders; Nippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powderman



POWER EQUIPMENT OPERATORS (AREA 1)  
All Counties and portions of Counties East of the 120th Meridian

LABORERS (Area 4)  
Those portions of Chelan, Douglas, Kittitas, Okanogan and Yakima Counties lying West of the 120th Meridian

Group 1: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burner; Car and Truck Loader; Carpenter Helper; Cement Handler; Changehouse or Dry Shack; Choker Setter; Clean-up Laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crush Feeder; Curling Laborer; Demolition, wrecking and moving; Ditch Digger; Drierman; Dumpman; Elevator Operator; Excavator; Grout Machine Header Tender; Header Laborer; Feeders; Epoxy Technician; Faller and Bucket, hand; Fence Laborer; Fine Graders; Flagman; Form Setter; Grout Machine Header Tender; Material Yard and Guardrail Erector; House Wrecker; Landscaping or Planting; Material Yard Man (including electrical); Nipper-Swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signman; Skipman; Sloper; Sprayman; Stockpiler; Toolroom Man (at job site); Track Laborer; Truck Spotter; Window Cleaner

Group 2: Air, gas or electric Vibrating Soreed; Anchor Machine; Ballast Regulator Machine; Chippers; Choker Splice; Chuck Tender; Clay Power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including Post Tension Beams; Jackhammer; Multiple Tamper; Pavement Breaker; Pipe Pot Tender; Pipe Wrapper; Powderman Helper; Power Jacks; Power wheelbarrow or Buggy; Railroad Spike Puller; Ribbon Setter; head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Swing Scaffold or Boatwain Chain rover water or 25 ft. in height; Tamper, multiple and self-propelled; Tamper and similar electric and air operated tools; Topman-tailman; Track Liners; Vibrator; Wagon Driller and Air Trac Helper; Well Point Laborer

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Helper; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scaler; Laser Beam Operator; Manhole Builder; Mortarman and Rod Carrier; Nozzelman (concrete pump, green cutter when using combination of high pressure air and water on concrete and rock, sandblast, gunnite, shotcrete) water blaster; Pipelayer and Caulker; Powderman; Raker, asphalt; Spreader (carries grade with rodder); Timberman, sewer; Tugger Operator; Vibrator, 4" and over; Wagon Driller and Air Trac Operator

Group 4: Calson Worker; Laser Beam Operator (tunnel); Powderman; No-timber Man

| Group No. | ZONE 1  | ZONE 2  | ZONE 3   | ZONE 4  | ZONE 5   |
|-----------|---------|---------|----------|---------|----------|
| 1         | \$ 9.80 | \$10.45 | \$ 10.70 | \$11.15 | \$ 11.60 |
| 2         | 10.10   | 10.75   | 11.00    | 11.45   | 11.90    |
| 3         | 10.65   | 11.30   | 11.55    | 12.00   | 12.45    |
| 4         | 10.80   | 11.45   | 11.70    | 12.15   | 12.60    |
| 5         | 10.95   | 11.60   | 11.85    | 12.30   | 12.75    |
| 6         | 11.20   | 11.85   | 12.10    | 12.55   | 13.00    |
| 7         | 11.45   | 12.10   | 12.35    | 12.80   | 13.25    |

FRINGE BENEFITS:  
Health and Welfare \$ .90  
Pension 1.40  
Apprenticeship Training .03

Group 1: Bit Grinders; Bolt Threading Machine; Compressor, under 2,000 cu. ft. per minute gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Driller's Helper; Fireman and Master Tender; Grade Checker; Helper (mechanic or welder, H.B.); Oilier; Oiler and Cable Tender; Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, case, John Deere and similar - or compacting or vibrator) except when pulled by dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator, Fireman or Pumper Operator, single unit (concrete); Belt Finishing Machine; Bending Machine (pipeline); Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leveler; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker; Hydra-lift and similar; Oil Trucks (pipeline); Holst, single drum; Loader (bucket, elevator and conveyor); Longitudinal Floater; Mixer Operator; Post Hole Auger or Punch; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator (self-propelled); Railroad Power Tamper Jack Operator (self-propelled); Spray Curling Machine (concrete); Spreader Jack Operator (self-propelled); Straddle Buggy (Boss and similar on construction job site); Tractor (farm type R/T with attachments except backhoe); Tugger Operator; Ditch Witch or similar

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POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)  
All Counties and portions of Counties East of the 120th Meridian

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland 6 similar); Belt-crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Blade Operator (motor patrol and attachments); Boac Operators; Boom Cats (side); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without-ofane); Cleaning and Doping Machine (pipeline); Concrete Pumps (Squeeze-crete, Flow-crete, Pumpcrete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Elevating Belt-type Loader (Euclid, Barber (Green or similar); Elevating Grader-type Loader (Dumort, Adams or similar); Equipment Serviceman, greaser and oiler; Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Hoist (2 or more drums or tower hoist); Loader (Overhead and front-end under 4 yds., R/T); Locomotive Engineer; Mixermobile; Mucking Machines; Paver or Cub Extruder (concrete and asphalt); Pump (grout or jet); Roller (finishing pavement); Rubber-tired Scraper (one motor with one scraper, under 40 yds.); Soreed Operator, Soil Stabilizer (P&H or similar); Spreader Machine; Tractor (Crawler, including Dozer, Scraper, Drills, Boom, rollers, etc.); Traverse Finishing Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead Operator; Vacuum Drill (reverse circulation drill, under 8"); Chain Person

Group 4: H.D. Mechanic; H.D. Welder; Refrigeration Plant Engineer (under 1,000 tons); Rubber-tired Scraper, multi-engine power, with one scraper (Euclid, TS-24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yds. and over); Surface Heater and Planer Machines; Turnhead (with re-screening)

Group 5: Asphalt Plant Operator; Automatic Subgrader (ditches and trimmers) (Auto-grade, ABC, R.R. Hansen and similar on grade wire); Backhoes (under 3 yds.); Batch and Wet Mix Operator - multiple units (2 and including 4); Blade (under 3 yds.); Concrete Slip Form Paver; Cranes (under 65 tons, sideboom over 24 ft., butt pin to CTR Sheave); Crusher, Grizzle and Screening Plant Operators; Drilling Equipment (8' bit and over) (Robbins' reverse circulation and similar); Loader Operator (front end and overhead 4 yds. to 8 yds.); Pile Driving Engineers; Paver (dual drum); Quad-track or similar equipment; Railroad Track Liner Operator (self-propelled); Rubber-tired Scrapers, Multi-engine, power with one scraper (Euclid, TS-24 and similar); Push Pull or Help Mate in use; Rubber-tired Scrapers, multiple engines with 2 scrapers; Shovels (under 3 yds.); Refrigeration Plant Engineer (1,000 tons and over); Signalmen (Whirleys, Highline Hammerheads or similar); Trenching Machines (7 ft. depth and over); Multiple Dozer units with single blade; Instrument Man

Group 6: Backhoes (3 yds. and over); Batch Plant (over 4 units); Cableway Controller-dispatcher; Cableway Operator; Clamshell Operator (3 yds. and over); Cranes, all-65 tons and over; Derricks and Stifflegs (65 tons and over); Drag-line (3 yds. and over); Elevating Belt (Holland type); Loader 360 degrees revolving Koehring Scooper or similar; Loaders (overhead and front-end over 8 to 12 yds.); Rubber-tired Scrapers (multiple engine with 3 or more scrapers); Shovels (3 yds. and over); Tower Crane; Whirleys and Hammerheads (all)

Group 7: Helicopter Pilot; Loaders (overhead and front-end - over 12 yds.); Party Chief

| POWER EQUIPMENT OPERATORS (AREA 1)<br>(All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3)) | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or App. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|---------------------------|
|                                                                                                                                              |                    | H & W                    | Pensions | Vacation |                           |
| Group 1                                                                                                                                      | \$ 12.10           | .85                      | 1.00     |          | .11                       |
| Group 2                                                                                                                                      | 12.20              | .85                      | 1.00     |          | .11                       |
| Group 3                                                                                                                                      | 12.31              | .85                      | 1.00     |          | .11                       |
| Group 4                                                                                                                                      | 12.36              | .85                      | 1.00     |          | .11                       |
| Group 5                                                                                                                                      | 12.38              | .85                      | 1.00     |          | .11                       |
| Group 6                                                                                                                                      | 12.43              | .85                      | 1.00     |          | .11                       |
| Group 7                                                                                                                                      | 12.44              | .85                      | 1.00     |          | .11                       |
| Group 8                                                                                                                                      | 12.45              | .85                      | 1.00     |          | .11                       |
| Group 9                                                                                                                                      | 12.48              | .85                      | 1.00     |          | .11                       |
| Group 10                                                                                                                                     | 12.50              | .85                      | 1.00     |          | .11                       |
| Group 11                                                                                                                                     | 12.63              | .85                      | 1.00     |          | .11                       |
| Group 12                                                                                                                                     | 12.66              | .85                      | 1.00     |          | .11                       |
| Group 13                                                                                                                                     | 12.69              | .85                      | 1.00     |          | .11                       |
| Group 14                                                                                                                                     | 12.76              | .85                      | 1.00     |          | .11                       |
| Group 15                                                                                                                                     | 12.78              | .85                      | 1.00     |          | .11                       |
| Group 16                                                                                                                                     | 12.79              | .85                      | 1.00     |          | .11                       |
| Group 17                                                                                                                                     | 12.81              | .85                      | 1.00     |          | .11                       |
| Group 18                                                                                                                                     | 12.84              | .85                      | 1.00     |          | .11                       |
| Group 19                                                                                                                                     | 12.88              | .85                      | 1.00     |          | .11                       |
| Group 20                                                                                                                                     | 12.95              | .85                      | 1.00     |          | .11                       |
| Group 21                                                                                                                                     | 12.96              | .85                      | 1.00     |          | .11                       |
| Group 22                                                                                                                                     | 13.01              | .85                      | 1.00     |          | .11                       |
| Group 23                                                                                                                                     | 13.06              | .85                      | 1.00     |          | .11                       |
| Group 24                                                                                                                                     | 13.28              | .85                      | 1.00     |          | .11                       |
| Group 25                                                                                                                                     | 13.32              | .85                      | 1.00     |          | .11                       |
| Group 26                                                                                                                                     | 13.37              | .85                      | 1.00     |          | .11                       |
| Group 27                                                                                                                                     | 13.45              | .85                      | 1.00     |          | .11                       |
| Group 28                                                                                                                                     | 13.67              | .85                      | 1.00     |          | .11                       |
| Group 29                                                                                                                                     | 13.87              | .85                      | 1.00     |          | .11                       |
| Group 30                                                                                                                                     | 13.98              | .85                      | 1.00     |          | .11                       |
| Group 31                                                                                                                                     | 14.00              | .85                      | 1.00     |          | .11                       |
| Group 32                                                                                                                                     | 14.28              | .85                      | 1.00     |          | .11                       |







## POWER EQUIPMENT OPERATORS (Area 3)

Clark, Cowlitz, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deck-Hand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakearm; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler-driver, 25 ton capacity or over; Crane Fireman, (all equipment except floating); A-frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Helper; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Helper; Welder's Helper; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Asphalt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator; Mixer Box Operator (C.T.B., Dry cu. ft. total capacity); Conveyor Operator; Concrete Curing Machine (riding Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (on job site); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Hydraulic Pipe Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamping; Bell Boy phones, etc.; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Service Oiler (greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Locomotive, under 40 tons; Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Pactor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power Driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulverizer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. Flywheel and under; Trenching Machine, Maximum digging capacity 3 ft. depth

## POWER EQUIPMENT OPERATORS (Area 3) (Cont'd)

Clark, Cowlitz, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginix Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Beza, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concrete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 24 cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Belterrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting Machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without front end attachments 24 cu. yds. and under (Ford, John Deere, Case type); Elevating Grader, Tractor towed requiring operator or grader; Pot Rammer; Ballast Regulator; Ballast Tamping, Multiple-purpose; Track Liner; Tie Spacer; Shuttle Car; Locomotive, 40 tons and over

Group 8: Diesel-Electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum, Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzly Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yd.; Loader, front end and overboard, 24 cu. yds. and under 4 cu. yds.; Hammer operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (bit grinder); H.D. Mechanic and Welder; Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. fly-wheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable PLOW (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Combination H.D. Mechanic-Welder, with dispatched and/or when required to do both; Rubber-tired Dokers and Pushers (Michigan, Cat, Hough type); Driller-Perforation, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel, Dragline; Clanshell, Hoe, etc., under 1 cu. yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

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## POWER EQUIPMENT OPERATORS (Area 3) (Cont'd)

Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the portion of Pacific, Counties

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Bending Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine, Single Scraper, with push-pull attachments, self-loader, Paddle Wheel, Auger type; Blade mounted Spreaders, Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electric, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 50 tons; Piledriver Operator; Floating Crane-shall, etc. under 3 cu. yds.; Floating Crane (derrick barge), less than 30 ton; Elevating Grader, operated by tractor operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator, Locomotive Crane, Gantry and Overhead

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, Auger type, Finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (derrick barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, Multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu. yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley over 80 ton and including 150 ton; Floating Crane (derrick barge) 80 ton less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in conjunction with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane 250 ton and over; Remote Controlled Earth Moving Equipment; Underwater equipment, remote or otherwise

POWER EQUIPMENT OPERATORS  
(DREDGING) (Area 1)  
(All Counties and portions of  
Counties East of the 120th  
Meridian)

|                                                                                                                                                                            | Fringe Benefits Payments |       |                      | Education<br>and/or<br>Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|----------------------|----------------------------------|
|                                                                                                                                                                            | Basic<br>Hourly<br>Rates | H & W | Pensions<br>Vacation |                                  |
| Group 1                                                                                                                                                                    | \$12.02                  | .85   | \$ 1.00              | .11                              |
| Group 2                                                                                                                                                                    | 12.12                    | .85   | 1.00                 | .11                              |
| Group 3                                                                                                                                                                    | 12.46                    | .85   | 1.00                 | .11                              |
| Group 4                                                                                                                                                                    | 12.51                    | .85   | 1.00                 | .11                              |
| Group 5                                                                                                                                                                    | 12.56                    | .85   | 1.00                 | .11                              |
| Group 6                                                                                                                                                                    | 12.88                    | .85   | 1.00                 | .11                              |
| Group 7:                                                                                                                                                                   |                          |       |                      |                                  |
| (a)                                                                                                                                                                        | 13.27                    | .85   | 1.00                 | .11                              |
| (b)                                                                                                                                                                        | 13.82                    | .85   | 1.00                 | .11                              |
| (All Counties and portions of<br>Counties West of the 120th<br>Meridian (except those<br>enumerated in Area 3) and<br>including the Northern portion<br>of Pacific County) |                          |       |                      |                                  |
| Group 1                                                                                                                                                                    | 12.02                    | .85   | 1.00                 | .11                              |
| Group 2                                                                                                                                                                    | 12.12                    | .85   | 1.00                 | .11                              |
| Group 3                                                                                                                                                                    | 12.46                    | .85   | 1.00                 | .11                              |
| Group 4                                                                                                                                                                    | 12.51                    | .85   | 1.00                 | .11                              |
| Group 5                                                                                                                                                                    | 12.56                    | .85   | 1.00                 | .11                              |
| Group 6                                                                                                                                                                    | 12.88                    | .85   | 1.00                 | .11                              |
| Group 7:                                                                                                                                                                   |                          |       |                      |                                  |
| (a)                                                                                                                                                                        | 13.27                    | .85   | 1.00                 | .11                              |
| (b)                                                                                                                                                                        | 13.82                    | .85   | 1.00                 | .11                              |
| (DREDGING (Area 3)<br>(Clark, Cowlitz, Klickitat,<br>Pacific (Southern portion),<br>Skamania and Wahkiakum Counties))                                                      |                          |       |                      |                                  |
| Group 1                                                                                                                                                                    | 11.14                    | 1.00  | .50                  | .05                              |
| Group 1A                                                                                                                                                                   | 11.80                    | 1.00  | .50                  | .05                              |
| Group 2                                                                                                                                                                    | 10.78                    | 1.00  | .50                  | .05                              |
| Group 3                                                                                                                                                                    | 10.54                    | 1.00  | .50                  | .05                              |
| Group 4                                                                                                                                                                    | 10.28                    | 1.00  | .50                  | .05                              |



POWER EQUIPMENT OPERATORS (Areas 1 and 2)  
(DREDGING)

- Group 1: Assistant Mate (deckhand)
- Group 2: Fireman; Oiler
- Group 3: Assistant Engineer (Electric, Diesel, Steam or Booster pump);  
Mates and Boatmen
- Group 4: Engineer Welder; Crane-man
- Group 5: Assistant Engineer (Electric Generator Operator for primary  
pump, power barge or dredge)
- Group 6: Leverman, Hydraulic
- Group 7: Leverman, Dipper;  
(a) 5 yards and under  
(b) Over 5 yards

POWER EQUIPMENT OPERATORS (Area 3)  
(DREDGING)

- Group 1: Leverman, Hydraulic
- Group 1A: Leverman, Dipper
- Group 2: Assistant Engineer (including Watch Engineer, Welder, Mechanic,  
and Machinist) and Mate
- Group 3: Tenderman (Boatman, Attending Barge Plant); Fireman

## TRUCK DRIVERS (Area 1)

All Counties and portions of Counties East of the 120th Meridian

| GROUP NO. | ZONE 1   | ZONE 2  | ZONE 3  | ZONE 4  | ZONE 5  |
|-----------|----------|---------|---------|---------|---------|
| 1         | \$ 10.98 | \$11.61 | \$11.86 | \$12.33 | \$12.76 |
| 2         | 11.02    | 11.67   | 11.92   | 12.37   | 12.82   |
| 3         | 11.08    | 11.73   | 11.98   | 12.43   | 12.88   |
| 4         | 11.17    | 11.82   | 12.07   | 12.52   | 12.97   |
| 5         | 11.38    | 12.03   | 12.28   | 12.73   | 13.16   |
| 6         | 11.42    | 12.07   | 12.32   | 12.77   | 13.22   |
| 7         | 11.48    | 12.13   | 12.38   | 12.83   | 13.28   |
| 8         | 11.52    | 12.17   | 12.42   | 12.87   | 13.32   |
| 9         | 11.63    | 12.28   | 12.53   | 12.98   | 13.42   |
| 10        | 11.67    | 12.32   | 12.57   | 13.02   | 13.47   |
| 11        | 11.98    | 12.63   | 12.88   | 13.33   | 13.78   |
| 12        | 12.12    | 12.77   | 13.02   | 13.47   | 13.92   |
| 13        | 12.28    | 12.93   | 13.18   | 13.63   | 14.08   |
| 14        | 12.42    | 13.07   | 13.32   | 13.77   | 14.22   |

PRIME BENEFITS:  
Health & Welfare  
Pensions  
No. 1: See ZONE DEFINITIONS following TRUCK DRIVERS Classifications

Group 1: Flat Bed Truck, single rear axle; Backst Driver;  
Fork Lift, 3,600 pounds and under; Fuel Truck Driver (Steam Cleaner  
and Washer); Helper and Swamper; Leverperson loading Trucks at Bunkers;  
Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator;  
Team Driver; Tractor (small rubber tired pulling trailer or similar  
equipment); Water Tank Truck 1,800 gallons.

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual  
rear axle; Power Boat hauling employees or material; Tireperson  
No. 1; Warehouseperson

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank  
Driver; Power operated Sweeper; Semi-trailer, Low Bed, Truck and  
Trailer; Straddle Carrier (Ross Hyster and similar); Transit Mixers  
and Trucks hauling concrete (3 yards and under); Trucks, side, end,  
and bottom dump (under 6 yards); Water Tank Truck (1,801 - 4,000  
gallons)

Group 4: Auto Crane - 2,000 pounds capacity; Bulk Ement Spreader;  
Dumpton (56 yards and under); Flaherty Spreader, Box Driver; Flat  
Bed Truck (using power take off); Fork Lift (over 3,000 pounds);  
Oil Distributor Driver (road, bootperson, leverperson helper); Rubber-  
tired tunnel jumbo; Scissor Truck; Slurry Truck Driver; Transit  
Mixers and Trucks hauling concrete (over 3 yards to 6 yards); Water  
Tank Truck (4,001 - 6,000 gallons); Wrecker and Tow Trucks

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## TRUCK DRIVERS (AREA 1) (Cont'd)

All Counties and portions of Counties East of the 120th Meridian

- Group 5: Low Boy (under 50 tons); Service Grusser; Tireperson No.  
2; Truck, side, end, and bottom dump (over 8 yards to 12 yards)
- Group 6: A-Frame (Swedish Crane, Iowa 3,000, Hydrolift); Water Tank  
Truck (6,001 - 8,000 gallons)
- Group 7: Dumpton (over 6 yards); Transit Mixers and Trucks hauling  
concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump  
(over 11 yards including 20 yards)
- Group 8: Low Boy (over 50 tons); Water Tank Truck (8,001 - 10,000  
gallons); Tractor with Steer Trailer
- Group 9: Transit Mixers and Trucks hauling concrete (10 yards to  
15 yards); Trucks, side, end and bottom dump (over 20 yards including  
30 yards); Water Tank Truck (10,001 - 12,000 gallons)
- Group 10: Mechanic, Field
- Group 11: Tournarocker, D.M.'s and similar, with 2 or 4 wheel power  
tractor with trailer, gallonage or yardage scale, which is greater;  
Transit Mixers and Trucks hauling concrete (15 yards to 20 yards);  
Trucks, side, end and bottom dump (over 30 yards to 40 yards); Water  
Tank Truck (12,001 - 14,000 gallons)
- Group 12: Transit Mixers and Trucks hauling concrete (over 30 yards);  
Trucks, side, end and bottom dump (over 40 yards to 50 yards)
- Group 13: Truck, side, end and bottom dumps (over 50 yards to 100  
yards)
- Group 14: Helicopter Pilot hauling employees or material; Trucks,  
side, end and bottom dump (over 100 yards)

| Basic<br>Hourly<br>Rates                                                                                                                                                                                                                        | Fringe Benefits Payments |          |          | Education<br>and/or<br>Appr. Tr. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|----------------------------------|
|                                                                                                                                                                                                                                                 | M & W                    | Pensions | Vacation |                                  |
| TRUCK DRIVERS (Area 2)<br>(All Counties and portions of<br>Counties West of the 120th<br>Meridian (except those enumerated<br>in Area 3) and including the<br>Northern portion of Pacific<br>County and all of Kittitas<br>and Yakima Counties) |                          |          |          |                                  |
| Group 1                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 2                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 3                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 4                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 5                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 6                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 7                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 8                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 9                                                                                                                                                                                                                                         | .94                      | .75      |          | .09                              |
| Group 10                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 11                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 12                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 13                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 14                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 15                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 16                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 17                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 18                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 19                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 20                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |
| Group 21                                                                                                                                                                                                                                        | .94                      | .75      |          | .09                              |



TRUCK DRIVERS (Area 2)  
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

- Group 1: Leverman and Loaders at bunkers and batch plants; Pickup Truck, Escort or Pilot Car; Swampers; Warehouseman and Checkers
- Group 2: Team Drivers
- Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site, warehousing; Dumpsters, and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobza, Leterneau, Westinghouse, Athey Wagon, Mucild, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting materials; Dump Trucks - side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yards; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreeder, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Truck (up to 1,600 gallons); Winch Truck, single rear axle; Mrecker, tow truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Ross, Hyster, and similar equipment); Water Wagon and Tank Truck, 1,600 gallons to 3,000 gallons)

Group 6: Transit-mix, 0 to and including 41 yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yards to and including 12 yards; Explosive Truck (field mix) and similar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

Group 9: Bulk Cement Tanker; Dumpsters and similar equipment (as listed in Group 3) - over 16 yards to and including 20 yards; Water Wagon and Tank Truck, over 3,000 gallons

TRUCK DRIVERS (Area 2)  
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

- Group 10: Bull Lifts and similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing
- Group 11: Transit-mix, over 41 yards to and including 6 yards
- Group 12: Flatbed or Hydralift Truck - similar equipment
- Group 13: Dumpsters and similar equipment (as listed in Group 3) - over 20 yards to and including 30 yards; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross
- Group 14: Transit-mix, over 6 yards to and including 8 yards
- Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yards to and including 40 yards; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yards to and including 10 yards

Group 17: Flatbed and similar equipment (as listed in Group 3) - over 10 yards to and including 12 yards

Group 18: Transit-mix, over 12 yards to and including 16 yards

Group 19: Transit-mix, over 16 yards to and including 20 yards

Group 20: Transit-mix, over 20 yards to and including 20 yards

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TRUCK DRIVERS (Area 2)  
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

| Group No. | Zone 1  | Zone 2  | Zone 3  | Zone 4  | Zone 5  | Zone 6  |
|-----------|---------|---------|---------|---------|---------|---------|
| 1         | \$10.29 | \$10.69 | \$11.04 | \$11.29 | \$11.54 | \$11.79 |
| 2         | 10.34   | 10.74   | 11.09   | 11.34   | 11.59   | 11.84   |
| 3         | 10.39   | 10.79   | 11.14   | 11.39   | 11.64   | 11.89   |
| 4         | 10.44   | 10.84   | 11.19   | 11.44   | 11.69   | 11.94   |
| 5         | 10.49   | 10.89   | 11.24   | 11.49   | 11.74   | 11.99   |
| 6         | 10.59   | 10.99   | 11.34   | 11.59   | 11.84   | 12.09   |
| 7         | 10.69   | 11.09   | 11.44   | 11.69   | 11.84   | 12.19   |
| 8         | 10.79   | 11.19   | 11.54   | 11.79   | 12.04   | 12.29   |
| 9         | 10.89   | 11.29   | 11.64   | 11.89   | 12.14   | 12.39   |
| 10        | 11.06   | 11.46   | 11.81   | 12.06   | 12.31   | 12.56   |
| 11        | 11.16   | 11.56   | 11.91   | 12.16   | 12.41   | 12.66   |
| 12        | 11.26   | 11.66   | 12.01   | 12.26   | 12.51   | 12.76   |
| 13        | 11.36   | 11.76   | 12.11   | 12.36   | 12.61   | 12.86   |
| 14        | 11.46   | 11.86   | 12.21   | 12.46   | 12.71   | 12.96   |

PAID BENEFITS:  
Health & Welfare \$ .68  
Pension .70  
Vacation .88  
Apprenticeship Training .05

\*SEE ZONE DESCRIPTION - following Truck Driver Classifications.

TRUCK DRIVERS (Area 3)  
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump Trucks, side, end and bottom dumps, including Semi-trucks and Trains or combinations thereof; 6 cu. yds. and under, Lift Jitneys, Fork Lifts (all sides in loading, unloading and transporting material on job site); Loader and/or Leverman on concrete dry batch plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Helper; Truck Mechanic Helper; Warehouseman (warehouse parts, tool men and parts chaser, checkers and receivers); Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame of Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

Group 3: Dump Trucks, side, end and bottom dumps, including Semi-trucks and Trains or combinations thereof; over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and wet or dry mix trucks; 5 cu. yds. and under; Tireman (full-time basis); Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreeder Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers of doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Straddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters of similar equipment, all sizes; Transit Mix and wet or dry trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof; over 10 cu. yds. and including 20 cu. yds.; Transit Mix and wet or dry mix truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic-Welder - Body Repairman; Water Wagons (rated capacity 5000 to 7000 gallons



TRUCK DRIVERS (Area 3) (Cont'd)  
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern  
portion of Pacific, Counties

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 30 cu. yds.; Transit Mix and wet or dry mix trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity), over 7000 gallons to 10,000 gallons

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and wet or dry mix trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagons (rated capacity), over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 40 cu. yds. and including 50 cu. yds.; Transit Mix and wet or dry mix trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

Drivers and Helpers (handling sacked cement - add \$15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

ZONE WAGE SCALE (AREA 1)

Cement Masons  
Travel Zone Centers: Wenatchee Pasco Spokane  
Moses Lake \*Coeur d'Alene \*Walla Walla Yakima  
Leviston  
Laborers (Heavy and Highway)  
Power Equipment Operators  
TRUCK DRIVERS  
Travel Zone Centers: Pasco Spokane  
Moses Lake \*Coeur d'Alene \*Walla Walla  
Leviston

\*15 mile free zone

Zone A - Within a 15 mile radius from the center of the above named Cities  
Zone B - 15-30 miles radius from the center of the above named Cities  
Zone C - 30-45 miles radius from the center of the above named Cities  
Zone D - 45-90 miles radius from the center of the above named Cities  
Zone E - Over 90 miles radius from the center of the above named Cities

ZONE WAGE SCALE (AREA 3) ONLY

LABORERS  
Goldendale, Longview and Vancouver  
POWER EQUIPMENT OPERATORS  
Astoria, Goldendale, Hood River, Longview  
The Dalles and Vancouver

TRUCK DRIVERS  
Astoria, Goldendale, Longview, the Dalles and Vancouver

ZONE A: All jobs or projects located within  
10 miles of the respective City Hall

ZONE B: More than 10 miles but less than 25  
miles from the City Hall

ZONE C: More than 25 miles but less than 35  
miles from the respective City Hall

ZONE D: More than 35 miles but less than 45  
miles from the City Hall

ZONE E: More than 45 miles but less than 75  
miles from the respective City Hall

ZONE F: More than 75 miles from the respective  
City Hall

[FR Doc. 78-36121 Filed 12-28-78; 8:45 am]

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Federal Register

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PART VI



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant  
Secretary for Housing—  
Federal Housing  
Commissioner

## COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Proposed Eligibility Requirements,  
Contract Rights and Obligations



[4210-01-M]

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—  
Federal Housing Commissioner

[24 CFR Part 250]

[Docket No. R-78-597]

## COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Proposed Eligibility Requirements, Contract  
Rights and Obligations

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner (the Commissioner) proposes to revise Part 250, which sets forth the eligibility requirements and contract rights and obligations with respect to the multifamily coinsurance program, so as to correct certain errors included in previously published regulations, simplify program operations, and increase the potential for coinsurance usage.

DATE: Comments due January 29, 1979.

ADDRESS: Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-7603.

### FOR FURTHER INFORMATION CONTACT:

Thomas W. White, Acting Director, Office of State Agency and Bond Financed Housing, (202) 755-5945

SUPPLEMENTARY INFORMATION: On September 29, 1976 at 41 FR 43068, the Department published a final rule which added to 24 CFR a new part, Part 250, which established a multifamily coinsurance program for state housing finance agencies, under the authority of Section 244 of the National Housing Act (12 USC 1715 29). This was added by Section 307 of the Housing and Community Development Act of 1974 (PL 93-383). In summary, Section 244 authorizes the Secretary to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provisions, pursuant to a coinsurance contract providing that the agency will (1) assume a portion of any loss on the transaction, and (2) carry out, subject to audit, exception or review requirements, such credit approval, appraisal, inspection, commitment, property disposition, or

other function as the Secretary approves.

During the period from publication of the above cited final rule to the present, no mortgage insurance has actually been written under this program, although several of the state agencies have expressed an interest in seeking approval to process cases under coinsurance. Under the circumstances, the Department proposes to revise the program as set forth below. The proposed revision addresses three major objectives: (1) modifying the program to increase its usefulness to state housing finance agencies; (2) simplifying the provisions and deleting unessential materials; and (3) correcting inadvertent errors. The major differences between the present program and the proposed program are also described below, with the citations in each case referring to the proposed regulations unless otherwise indicated. The revised regulations are presented in their entirety.

The key changes the Department is proposing from the present regulations are the following: (1) Elimination of the deductible and portfolio insurance concept; (2) substitution of a sliding scale of coinsurance risk sharing ratio and premium for the single fixed low-sharing relationship; (3) requirement for a demonstrable capacity by the agency to meet its share of the risk; (4) limitation of the coinsurance provisions to new construction and substantial rehabilitation projects insured pursuant to Sections 221 (d)(3) and (d)(4); (5) deletion of the requirement that at least 20 percent of the units under the coinsurance program be assisted under the Section 8 Housing Assistance Payments Program, however, most agencies are required to finance housing for low and moderate income families and the majority of the units will be Section 8 and this deletion is being proposed to increase the flexibility available to the agency; and (6) a requirement for a performance review whereby not fewer than the first five loans submitted by each agency will be carefully reviewed by the Department before a commitment is issued.

(1) Approved agency—Section 250.3. The proposed provision gives the Department flexibility in determining the administrative level that will be involved in case processing. This flexibility departs from the present provision which places all coinsurance case processing at the central office.

(2) Eligible projects—Section 250.10. This section that requires a specified portion of occupants of a project be low income has been deleted. This deletion reflects the facts that Sections 221(d)(3) and 221(d)(4) do not have any income restrictions. We expect that the principal beneficiaries of this

coinsurance program will be low and moderate income families.

(3) Certification as an approved agency—Section 250.202. The requirement that an agency be approved as a HUD mortgagee prior to being certified by HUD as eligible to underwrite coinsured mortgages has been added. Also, Section 250.202(b) establishes a new requirement that the agency demonstrate that it will have access to resources to meet its share of liabilities or losses under the coinsurance program.

(4) Withdrawal of approval—Section 250.204. Since the agency, pursuant to item 3, is to be an approved mortgagee, the standard causes for withdrawal of mortgagee approval have been added to this section. Further, Section 250.204(d) provides that certification as an approved agency may be withdrawn if an agency transfers a coinsured mortgage to any party without the advance approval of the Commissioner.

(5) Application fees, inspection fees, and service charges—Section 250.302. A restriction has been inserted limiting the total amount chargeable to the mortgagor to the maximum amount chargeable under the related full insurance program, i.e., Section 221(d)(3) or 221(d)(4).

(6) Processing and commitment—Section 250.305(b). This additional provision emphasizes that, although all applications for insurance commitments must be submitted to the Commissioner for commitment issuance, not fewer than the first 5 commitments for endorsement submitted by each agency will be carefully reviewed by the Commissioner before a commitment is issued.

(7) Covenant for hazard insurance—Section 250.314. The proposed provision requires somewhat more comprehensive coverage than does the existing provision.

(8) Supervision applicable to all mortgagors—Section 250.323(e)(5). This provision has been added to require that each agency submit a quarterly report to the Commissioner on any troubled projects and pertinent remedial actions.

(9) Commercial and community facilities—Section 250.332(a). The previous 10 percent of net rentable area limitation has been deleted, and the pertinent provisions applicable to the Section 221 (d)(3) and (d)(4) full insurance programs have been substituted in its place.

(10) Maximum mortgage amounts—Section 250.402. All of the pertinent provisions have been revised, thereby allowing maximum mortgage amounts under coinsurance which are identical to those prevailing under the Section 221 (d)(3) and (d)(4) full insurance programs. Under existing coinsurance

regulations for either new construction or rehabilitation, all sponsors are limited to loans equaling 90 percent of replacement cost or value, notwithstanding the fact that nonprofit or cooperative sponsors under the (d)(3) full insurance program are eligible for 100 percent loans, although all other (d)(3) sponsors and all (d)(4) sponsors are limited to 90 percent loans under both coinsurance and full insurance. The Department believes that nonprofit and cooperative sponsors should receive the same treatment under coinsurance as under full insurance, and accordingly proposes to allow them to receive 100 percent loans under coinsurance pursuant to Section 221(d)(3). It is believed that, in the event reductions in Departmental risk exposure are determined to be necessary, such reductions should be addressed by those provisions dealing with the proportion of loss payable by the Department as insurance benefits, and by the provisions establishing the premiums to be collected by HUD to compensate for coinsurance loss, rather than by reducing loan-to-value ratios below those allowed under the full insurance programs. Conforming amendments have also been made to Sections 250.333(a)(3), 250.342, 250.343 (b) and (c), and 250.403(c) (1)(ii) and (2)(ii) of the regulations under this part.

(11) Mortgages insured pursuant to Section 223(f)—Sections 250.410 through 250.417. These provisions of the existing regulations have been omitted from the proposed version of the program. The primary objective of the coinsurance program is to facilitate construction and rehabilitation of multifamily projects by the agencies, and this objective can be realized by using coinsurance pursuant to the provisions of the two pertinent full insurance programs, Section 221 (d)(3) and (d)(4). Deleting the Section 223(f) existing properties option results in a considerable simplification and shortening of the regulations. In any event, the Section 223(f) full insurance program will continue to be made available to agencies which seek insurance on mortgages covering the acquisition or refinancing of existing properties.

(12) Requirements applicable to mortgages insured under Section 236—Subpart E. This deletion of currently existing Sections 250.501 through 250.516 reflects the current lack of availability of contract authority under Section 236.

(13) Creation of contract of coinsurance—Section 250.703. The revised provisions have undergone substantial simplification. The proposed program establishes a separate contract for each coinsured mortgage on an individual basis, thereby incorporating the

processing structure applicable to the full insurance programs.

(14) Interest reduction payments contract—Section 250.704. This section deletes the existing regulations since they apply to the Section 236 program.

(15) Amount of MIP to be collected from the mortgagor—Section 250.705. This section, which originally required an initial and annual premium payment of 0.4 percent of the outstanding principal balance, has been substantially revised. The 0.4 percent factor was based on an 80 percent—20 percent sharing of the residual loss on a defaulted mortgage by HUD and the lender, respectively, after the lender had absorbed a certain portion of the total loss as an initial deductible. Under the proposed program there are neither portfolios nor deductibles; each mortgage is treated as a discrete entity. Also, a single fixed loss-sharing relationship is not required, but rather, a range of coinsurance participation levels is made available, accompanied by a corresponding sliding scale of premium rates. The premium charged by HUD is, to the maximum practical extent, directly proportional to the share of the risk borne by the Department. Therefore, under the revised structure, the mortgagor would be free to choose its own extent of exposure, provided the statutory minimum of 10 percent were met. The annual premium payment to HUD would range from 0.5 percent to 0.25 percent of the principal balance depending upon the degree of coinsurance.

(16) Pro rata payment of annual MIP—Section 250.712. The proposed program excludes this provision, thereby further simplifying the program structure and reducing administrative costs. The individual premium amount, payable in advance each year, is intended to cover any subsequent period, not to exceed one year, during which the mortgage is insured by the Commissioner.

(17) Application for insurance benefits—Section 733. These provisions are excluded from the proposed program, since the latter, now significantly simplified, does not utilize complex portfolio mechanisms or cumbersome deductible calculations. Those portions of this section which are still applicable have been included elsewhere in the proposed regulations establishing the insurance claim and benefit procedure.

(18) Amount of payment—Section 250.738. This section has been completely rewritten to stipulate that, upon acquiring title to a property through foreclosure of a defaulted mortgage, or through other means, the agency may file a claim for initial payment of insurance benefits. The

total benefits amount would be reduced by any amount still outstanding of principal or interest owed to HUD by the agency as a result of any advance made by HUD to the agency in order to facilitate the execution of a special forbearance agreement during the period of mortgage default. In addition, this section puts a dollar limit on HUD's share of coinsurance liabilities.

(19) Disposition of property—Section 250.739. Several technical and clarifying modifications have been proposed in this instance to effect compatibility between these property disposition provisions and the other revised sections dealing with claim and benefits procedures.

(20) Items added to principal in computing claim payment—Section 250.740. Subsection (d) has been revised substantially. The existing provision requires the payment of interest by HUD at the contract rate on the unpaid principal amount for the period from the date of acquisition of title to the property by the lender to the date of payment of insurance benefits. The proposed provision calls for contract interest on only the difference between the principal and the amount included in the initial benefits payment, computed for the period from date of acquisition of title to date of final payment of insurance benefits.

(21) Items deducted from principal in computing claim payment—Section 250.741. Various clarifying technical revisions have been proposed. Under the proposed regulations, HUD is to be fully reimbursed for all amounts due pursuant to a direct claim payment offset procedure set forth at § 205.738(d).

Interested persons are invited to submit written comments, views, or data regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. All such submissions received on or before January 29, 1979 will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the address set forth in the preceding paragraph.



The requirements of Executive Order 11821 regarding economic impact have been met.

Accordingly, Part 250 of Chapter II of 24 CFR is proposed to read as set forth below.

## PART 250—COINSURANCE

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AUTHORITY: Sec. 244, National Housing Act (12 U.S.C. 1715-29).

### Subpart A—General Provisions

- § 250.1 Purpose.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new section 244 entitled Coinsurance. Section 244, as amended by Section 6 of the Housing Authorization Act of 1976, authorizes the Secretary of Housing and Urban Development to insure and make a commitment to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provision, pursuant to a coinsurance contract providing that the agency will (1) assume a percentage of any loss and (2) carry out (subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary approves.

(b) By placing some of the risks which HUD now assumes when insuring mortgages on approved State Housing Agencies the coinsurance program could help to assure more careful initial evaluation of proposed projects by lenders who are willing to accept some, but are unwilling to accept all, of the risk of mortgage lending for rental housing projects. It could also make feasible assumption by lenders of the processing responsibilities incidental to a mortgage insurance program and thereby reduce the time required to approve applications for mortgage insurance.

(c) The Congress indicated its concern that in delegating mortgage insurance processing duties to lenders, physical inspections of new dwelling units be continued in accordance with the same standards used under the regular HUD programs. To accord with these concepts, this part sets forth the Department's regulations describing a coinsurance program for

mortgages on multifamily projects underwritten by State Housing Agencies.

(d) The primary purpose of this program is for HUD to assume some of the risk exposure of the multifamily loans made by State Housing Agencies, thereby reducing the perceived risks to investors and increasing the agencies' access to capital markets. In recognition of the capabilities of State Housing Agencies, their successful operating histories and their accountability to their individual State governments, these regulations vest the maximum amount of processing responsibilities with these agencies.

### § 250.2 Definition of State Housing Agency.

As used in this part, the term "State Housing Agency", or "Agency", means any public body, agency, or instrumentality created by a specific act of a state legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction, or rehabilitation, for persons and families of low and moderate income.

### § 250.3 Approved agency.

An approved agency under this part must be a State Housing Agency certified as eligible to underwrite mortgages for coinsurance as provided in § 250.202. The HUD Central Office shall have sole responsibility for the certification of approved agencies pursuant to the requirements of this part.

### § 250.4 Effect of implementation of program on mortgage market.

Section 244 of the National Housing Act requires that no contract of coinsurance be entered into under this part until the Secretary has, after due consultation with the mortgage lending industry, determined that a program for State Housing Finance Agencies, as authorized by Section 244, will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under provisions of the National Housing Act other than Section 244. The Department intends to monitor continuously the impact of this program and to consider evidence submitted at any time which would tend to suggest that disruptions in the mortgage market or reduced availability of mortgage credit to borrowers is casually related to the availability of coinsurance under this part.

### § 250.5 Utilization of existing multifamily insurance authorities.

With respect to mortgages to be co-insured under this part, mortgage insurance will be provided under Section 221(d)(3) or Section 221(d)(4) of the National Housing Act and the regula-

tions implementing those sections as set forth in this part.

### § 250.6 Effect of availability of coinsurance.

No insurance authorized under any provision of the National Housing Act other than Section 244 of that Act shall be withdrawn, denied, or delayed by reason of the availability of insurance under the program authorized by this part.

### § 250.7 Effect of availability of coinsurance on flow of mortgage credit to older, declining areas.

Insurance will continue to be available under this part only to the extent the Secretary has determined that the availability of insurance authorized by this part does not adversely effect the flow of mortgage credit to older, declining areas and to the purchasers of older and lower-cost housing.

### § 250.8 Coinsurance pursuant to Section 223(e) not available.

Insurance authorized by this part will not be available for mortgages on properties which are eligible to be insured solely pursuant to the authority of Section 223(e) of the National Housing Act.

### § 250.9 Safeguards for consumers.

(a) The inspection of construction on projects covered by mortgages approved for coinsurance prior to the beginning of construction under this part shall be conducted in accordance with the standards and criteria set forth in Subpart S of Part 200 of this chapter and used with respect to dwellings or projects approved for mortgage insurance under provisions of Title II of the National Housing Act other than Section 244.

(b) The National Environmental Policy Act of 1969, as amended, is applicable to major Federal actions proposed pursuant to this part. The Secretary may make appropriate provisions for the delegation to a State agency of preparation of any detailed statement required pursuant to Section 102(2)(C) of that statute. However, final responsibility for making determinations related to environmental impact which are not delegable under the National Environmental Policy Act of 1969 has been retained by the Department of Housing and Urban Development.

### Subpart B—Certification of a State Housing Agency as an Approved Agency

- § 250.201 Review of state agency prior to certification as an approved agency.

Certification of a State Housing Agency as an approved agency, eligible to underwrite and service mortgages on multifamily projects for coinsur-

ance, will be made after an on-site review of the Agency's operations by HUD. This review will cover the adequacy of the Agency's technical staff, procedures for screening and processing applications for mortgage insurance, and the Agency's capability to service such mortgages and supervise project management.

### § 250.202 Certification as an approved agency.

A State Housing Agency whose technical staff and procedures for screening and processing applications have been deemed satisfactory after the review required by § 250.201; which has been approved as a mortgagee pursuant to § 203.1(d) of this chapter; and which meets the following special requirements may be certified as an approved agency eligible to underwrite mortgages on multifamily projects under this part:

(a) It shall provide a written opinion of its Counsel that it has the necessary powers under State law to participate in the program authorized under this part;

(b) It shall submit satisfactory evidence to the Commissioner: (1) That its assets are properly proportioned to its liabilities and are adequate for, and invested properly in relation to, the character and extent of its intended operations; and (2) that it can meet its share of the coinsurance liabilities or losses for the mortgage loans covered by the provisions set forth in this part. For the latter such evidence may include funds placed in escrow, a state mortgage insurance fund, a pledge of specified funds that may be received by the State government from the Federal government under one or more of the revenue sharing programs authorized by the Congress, an unqualified legal opinion from the State Attorney General that the State government has the resources, and will make every effort to provide from whatever sources it deems appropriate such sums as may be required which, together with the unencumbered resources of the agency, will be sufficient to meet the agency's liabilities or losses arising from the loans covered by the coinsurance written pursuant to this part, and where the Governor shall cause the amount of such deficiency, if any, to be placed in the budget of the State for the next succeeding fiscal year, so that the State legislature shall be enabled to provide appropriation sufficient to make up any such deficiency or otherwise to avoid any default. Such amount appropriated, if any, shall be repaid to the State as soon as possible by the agency from monies in the general fund in excess of the amount required to make and keep the agency self-supporting;



(c) It shall submit evidence to the Commissioner that it has established procedures for discharging full underwriting, servicing and property disposition functions in a manner which is not inconsistent with the requirements of this part;

(d) It shall submit to periodic auditing and review by the Commissioner or the Comptroller General of the United States with respect to its participation in the program authorized by this part;

(e) It shall submit its most recent detailed audit report of its books made by an independent certified public accountant selected in accordance with applicable State law or procedures supplemented by such additional financial information as the Commissioner shall request;

(f) It shall file with the Commissioner similar annual audits within (1) such period of time required pursuant to agency statute and procedures, or (2) within 150 days of the closing of its fiscal year so long as its approval as an approved agency continues;

(g) It shall have the capability, either through technical staff employed by it, or through contracts with persons outside the agency, to discharge full mortgage underwriting, servicing and property disposition functions;

(h) It shall promptly notify the Commissioner of any changes in its processing procedures which take place after its certification as an approved agency, and shall rescind any change in its processing procedures which the Commissioner determines is inconsistent with the requirements of this part;

(i) It shall have in its immediate employ a technical staff consisting of at least one individual who is knowledgeable in the area of construction, on in underwriting skills, and one who is skilled in the management of multi-family projects;

(j) It shall have in its immediate employ staff with sufficient professional and technical competence to monitor the performance of any work it contracts to have done by persons outside the agency such as appraisals, costs, architectural, engineering and management services;

(k) All appraisers used by the agency must adhere to minimum standards of education and experience established by the Commissioner.

#### § 250.204 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for co-insurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may

be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title as a result of withdrawal of mortgagee approval pursuant to § 203.07 of this chapter or for any of the following causes:

(a) Failure to maintain satisfactory capital funds or structure;

(b) Failure to perform underwriting, servicing, or property disposition functions consistent with the requirements of this part;

(c) Failure to discharge responsibilities under a contract for coinsurance;

(d) The transfer of a coinsurance mortgage to any entity without the advance approval of the Commissioner;

(e) The failure to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, and to deposit such funds to a special account or accounts;

(f) The use of escrow funds for any purpose other than that for which they were received;

(g) The payment by the agency of any fee, kickback, or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other payment or other consideration from the mortgagor, the seller, the builder, or any other persons for services related to such transaction or transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner;

(h) Such other reason as the Commissioner determines to be justified particularly if the default ratio as measured by dollar balances exceeds 20 percent.

§ 250.205 Effect of withdrawal of certification as an approved agency on insurance commitments made while it was approved.

Withdrawal or termination of a State Housing Agency's certification as an approved agency under this part will not affect any mortgage insurance commitment issued while the Agency was an approved agency or the insurance on mortgages accepted for insurance while the Agency was an approved agency.

§ 250.207 Mortgage servicing during coinsurance period.

Servicing functions during the period when the Commissioner is a co-insurer of the mortgage shall be per-

formed only by the agency, except that the agency may elect to delegate servicing to another entity if the agency retains its obligations under this part.

§ 250.208 Required regulatory agreement with mortgagors.

(a) The agency and the mortgagor shall effect an agreement whereby the mortgagor, as further consideration for the making of the mortgage loan, contracts with the agency and with the Commissioner that it will fulfill the provisions of Subpart C, §§ 250.322 through 250.327. Such regulation or restriction will be in the form of a regulatory contract between the mortgagor and the agency which shall be responsible for enforcing the provisions of the regulatory contract.

(b) Further, the agency may regulate and restrict the mortgagor, as long as the Commissioner and the agency are co-insurers of the mortgage, on such other matters as may be required by the agency as conditions for lending which do not conflict with the requirements of the Commissioner under this part.

#### Subpart C—Eligibility Requirements Applicable to All Mortgages To Be Coinsured

##### § 250.301 Application.

The application for a commitment to make a coinsured mortgage loan on a project shall be submitted to the agency by the sponsor of such project accompanied by such exhibits as may be required by the agency to enable the agency to comply with requirements for coinsurance of the mortgage established under this part. An application for a commitment to make a mortgage loan may be required by the agency prior to the submission of the application contemplating mortgage insurance.

§ 250.302 Application fees, inspection fees, and service charges.

The agency may collect from the mortgagor such application fees, inspection fees, and initial service charges as it may require to reimburse itself for the cost of processing an application, conducting inspections, and closing a mortgage transaction, provided the total of such fees and charges does not exceed the maximum amount allowable under the applicable full insurance program, i.e., section 221(d)(3) or (d)(4).

§ 250.305 Processing and commitment.

(a) The agency shall perform all of the processing and make all of the determinations of the eligibility of a mortgage for coinsurance under this part except for the required determinations related to environmental impact which are not delegable under

the National Environmental Policy Act of 1969, and, upon completion of such processing and determinations, shall submit to the Commissioner a request for issuance of a commitment for mortgage insurance, which application shall be acted upon by the Commissioner and returned to the agency promptly. A commitment to insure issued by the Commissioner shall be based upon certifications made by the agency as to its compliance with the requirements of this part. A commitment to insure shall be effective for a designated term within which period the mortgagor is required to begin construction or rehabilitation, and if construction or rehabilitation is begun as required, the commitment shall be effective for such additional period as determined by the agency. The term of a commitment may be extended or may be amended in such manner as the agency may prescribe from time to time pursuant to an application to the Commissioner, provided it has been approved by him, for such extension or amendment of said commitment, which application shall be acted upon by the Commissioner and returned to the agency promptly after receipt thereof. An expired commitment may be reopened if a request for reopening is received by the Commissioner from the agency within 90 days of the expiration of the commitment and the Commissioner shall act upon the application for reopening of such expired commitment in the manner prescribed for amendment or extension of commitments herein above set forth. Upon completion of construction or rehabilitation and receipt by the Commissioner of the agency's certification that the terms and conditions of the commitment for coinsurance have been satisfied, the Commissioner shall promptly after receipt of application, indicate his insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance. All agency submissions must include certifications of compliance by the agencies with such previous participation clearance requirements and procedures as may be established by the Commissioner.

(b) The agency shall submit not less than the first 5 commitments for endorsement to be covered by the coinsurance provisions as set forth in this subpart to the Commissioner so that he may ascertain that the agency is processing applications in full compliance with the requirements prescribed by the Commissioner.

#### ELIGIBLE MORTGAGES

##### § 250.309 Mortgage form.

(a) The mortgage shall be executed on the agency's form as approved by

the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the agency and the Commissioner in writing.

##### § 250.310 Mortgage lien.

A mortgagor shall certify at endorsement of the loan for insurance and the agency shall determine that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the agency and the Commissioner. Liens other than the insured mortgage which may be approved (other than liens for taxes and assessments of the State or subdivisions of the State not yet due and payable, or ground rents) may not have under applicable law a priority equal or superior to the insured mortgage.

(b) There will not be outstanding any unpaid obligation contracted for in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the agency and the Commissioner. Obligations of the mortgagor shall be approved under this section only if such obligations are determined to be of a lesser priority for payment than the obligation of the insured mortgage.

##### § 250.311 Maturity.

The mortgage shall have a maturity satisfactory to the agency, not in excess of 40 years from commencement of amortization or for such longer term as may be approved by the Commissioner.

##### § 250.312 Payment requirements.

(a) Method of payment. The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the agency and the Commissioner.

(b) Date of first payment to principal. The agency shall estimate the time necessary to complete the project and shall establish pursuant to standards adopted by the agency the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than that deemed necessary and appropri-

ate by the agency to obtain sustaining occupancy.

##### § 250.312a Application of mortgage payments.

The mortgage shall provide that all monthly payments being made by the mortgagor to the agency shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The agency shall apply all payments received from the mortgagor or for the account of the mortgagor to the following items in the order set forth:

(a) Premium charges under the contract of insurance, where applicable.

(b) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

##### § 250.313 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

##### § 250.314 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured against loss or damage by fire and lightning upon a repair or replacement basis if available, and otherwise to the full insurable value of the project, with deductible provisions not to exceed \$5,000 for any one casualty. The mortgagor must also carry boiler explosion insurance on all boilers, pressure vessels and pressure piping in the project in an amount not less than the repair or replacement cost with coverage for bodily injury. Business interruption or use and occupancy insurance and general public liability insurance against claims for bodily injury and property damage must also be carried. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the agency and the Commissioner, as their interests may appear.

##### § 250.315 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the agency on each interest payment date of an amount sufficient to accumulate in the hands of the agency one payment period prior to its due date, the next annual mortgage insurance premium. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the agency as will amortize the ground rents, if any, and the



estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

#### § 250.316 Prepayment privileges.

Where the mortgage is given to secure a loan made by a mortgagee which has obtained the funds for such loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a provision that the mortgage indebtedness may not be prepaid in whole or in part without prior written consent of the mortgagee and the Commissioner. The consent of the mortgagee to prepay the debt, in whole or in part, may be conditioned upon payment to the mortgagee by the mortgagor of such fees and charges which are reasonable as determined by the Commissioner and which are related to the mortgagee's cost of redeeming the bonds or bond anticipation notes sold to finance the loan.

#### § 250.317 Late charge.

The mortgage may provide for the collection by the agency of a late charge, not to exceed 2 cents for each dollar of each payment to interest and principal more than 15 days in arrears, or such other charges as may be agreed to by the agency and the Commissioner, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

#### § 250.318 Maximum mortgage interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9 percent per annum with respect to mortgages receiving initial endorsement (or endorsement, in cases involving insurance upon completion) on or after September 2, 1975. Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

#### § 250.320 Loans to cover 2-year operating loss.

(a) Operating loss determination. When the agency determines that an operating loss has occurred during the first 2 full years following completion of the project, it may, in its discretion,

make a loan to cover such loss which shall be eligible for insurance under this part. For the purposes of this section, an operating loss shall occur when the agency determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) Security instrument. The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) Maximum interest rate. The loan may bear interest at such rate as may be agreed upon by the agency and the mortgagor, but in no case shall such rate exceed the highest mortgage interest rate provided for under this part on the date that the loan is extended. Interest shall be payable in monthly installments on the principal then outstanding.

(d) Maximum maturity. The loan shall be limited to a term not exceeding the unexpired term of the mortgage.

#### § 250.321 Mortgagor's certificate of non-discrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the agency as to each of the following points:

(1) That neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any part of the property covered by the mortgage to any person because of race, color, sex, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended on the date the mortgage was executed.

#### SUPERVISION OF MORTGAGORS

##### § 250.322 Regulation of mortgagors.

The mortgagor and the agency may agree to such regulation and restriction of the actions of the mortgagor by the agency as they deem desirable: *Provided*, That the requirements set

forth in §§ 250.323, 250.324, 250.325, 250.326 and 250.327 are adhered to.

#### § 250.323 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the agency.

(b) The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the agency.

(c) In all projects a fund for replacements shall be established and maintained with the agency. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the agency, the Commissioner, and the Comptroller General or their duly authorized agents at all reasonable times.

(e) The mortgagor shall execute and deliver to the agency a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the agency on the date the certificate is executed. So long as the mortgage is coinsured under this part, the mortgagor's books and accounts will be kept in accordance with the requirements of the agency; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the agency; will be maintained for such periods of time as may be prescribed by the agency; and will be available to the agency, and to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the agency the following reports verified by the signature of such officers of the mortgagor as the agency may designate and in such form as prescribed by the agency.

(1) Monthly occupancy reports as required by the agency.

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the agency, certified to by an officer of the mortgagor and, when required by the agency, prepared and certified by a Certified Public Accountant, or other public accountant acceptable to the agency.

(3) Specific answers to questions upon which information is desired

from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the coinsured mortgage.

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(5) At the end of each calendar quarter the agency shall report to the Commissioner on any mortgagors encountering financial difficulties and on corrective actions being taken to alleviate such difficulties.

#### § 250.324 Supervision applicable to general mortgagors.

General mortgagors may include mortgagors which under State law or rules are required to be limited or regulated as to rates of return or distribution of profits, but which are not required to be so limited or regulated under the provisions of Section 221(d)(4) of the National Housing Act if the mortgage is insured under that section. The following restrictions and regulations will be applicable to general mortgagors:

(a) Capital structure. (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest, or, in the case of a partnership, participations therein may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency.

(b) Distribution of earnings. Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after the payment of and segregation of such funds as determined by the applicable laws and procedures of the agency.

(c) Borrowed funds. No distribution of any kind may be made from borrowed funds.

(d) Rents and charges. In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the invest-

ment consistent with providing reasonable rentals to tenants.

#### § 250.325 Supervision applicable to limited distribution mortgagors.

(a) Rate of return. The amount of any allowable distribution or disbursement from surplus cash generated by the mortgagor will not exceed in any one fiscal year more than such percentage of the mortgagor's initial equity investment as is agreed to by the agency and the Commissioner. The right of allowable distribution or disbursement from surplus cash may be cumulative. Dividends or other distributions may be declared or made only as of or after the end of a semiannual fiscal period. No dividends or other distribution shall be declared or made except out of surplus cash and pursuant to applicable laws and procedures of the agency.

(b) Rents and charges. In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a rate of return on the investment not exceeding the rate limitation of paragraph (a) of this section, and consistent with providing reasonable rentals to tenants.

(c) Borrowed funds. No distribution of any kind may be made from borrowed funds.

#### § 250.326 Supervision applicable to cooperative mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the agency.

(b) Except with the prior written approval of the agency, no compensation shall be paid by the corporation to its officers or directors, as such, or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed to by the agency, and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

(c) A general operating reserve shall be established and maintained as long as the mortgage is coinsured under this part in a manner and for the purposes specified in the charter or regulatory agreement.

(d) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of

reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

#### § 250.327 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the agency that so long as the mortgage is coinsured under this part the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family by reasons of the fact that there are children in the family unless the project was designed expressly for occupancy by elderly patrons;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service;

(c) Sell the project as long as the mortgage is coinsured under this part, unless the purchaser also certifies under oath as is required by paragraphs (a) and (b) of this section.

(d) Preference for displacees. A preference or priority of opportunity to rent dwelling units shall be given to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

#### PREVAILING WAGE REQUIREMENTS

##### § 250.328 Applicability of prevailing wage requirements.

(a) In general. Prevailing wage requirements shall be applicable to a mortgage insured under this part, except those specified in paragraph (b) of this section, and compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) Labor standards. Any contract, subcontract, or building loan agreement executed for the performance of construction or rehabilitation of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1-5.12 (16 FR 4430).

(2) Ineligible contractors. No construction or rehabilitation contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcon-



tractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General pursuant to § 5.6(b) of the regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 FR 4431).

(b) Excepted transactions. The requirements of paragraph (a) of this section shall not be applicable to a project involving a cooperative where the agency and the Commissioner have waived the requirements and each of the following circumstances occurs.

(1) The laborers or mechanics not otherwise employed in the construction or rehabilitation of such project are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(2) The mortgagor establishes to the satisfaction of the agency and the Commissioner that amounts saved by the donated services will be credited to the account of the mortgagor.

#### § 250.329 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, sex, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provision.

#### PROPERTY REQUIREMENTS

##### § 250.330 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than the term of the mortgage where the interest of the fee owner of the real estate is subordinate to the interest of the agency; or

(3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such lease: Provided, That the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of

other liens except those approved by the agency.

##### § 250.331 Development of property.

(a) Obligation of the mortgagor. The mortgagor shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use. The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(b) Minimum number of units. A project shall consist of not less than five dwelling units.

##### § 250.332 Commercial and community facilities.

(a) The project may include only such commercial and community facilities as the agency determines will be adequate and appropriate to serve the occupants, and such additional facilities permitted under the provision of the National Housing Act pursuant to which coinsurance is being provided as may be agreed to by the Commissioner and the agency.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other in-patient or out-patient health facilities, and other essential service facilities for use by elderly or handicapped families.

#### COST CERTIFICATION REQUIREMENTS

##### § 250.333 Certification of cost requirements.

(a) Prior to endorsement of the mortgage for insurance, the agency shall enter into an agreement with the mortgagor in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 250.334.

(2) To execute a certificate of actual construction costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over 90 percent of actual costs, unless the mortgagor is a nonprofit or cooperative entity utilizing the provisions of Section 221(d)(3), in

which case 100 percent of such costs shall apply.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

##### § 250.334 Form of contract.

(a) In general. The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, which may include a fee to the builder in an amount allowed by the agency.

(b) Lump sum contract. A lump sum contract may be used where it is established to the satisfaction of the agency that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor, and where the mortgage is executed by a limited distribution or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the agency makes the foregoing determination as to nonidentity of interest and it is established to the agency's satisfaction that a cost plus form of contract is not required to protect its interests or the interests of the cooperative mortgagor.

(c) Cost plus contract. A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is determined by the agency that a cost plus form of contract is required to protect the interests of the agency or mortgagor.

(3) Where the mortgage is executed by a nonprofit mortgagor, unless it is established to the agency's satisfaction that a cost plus contract is not required to protect its interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

##### § 250.335 Certificate as to subcontracts.

If it is determined by the agency that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier of the general contractor, the mortgagor must certify to the agency prior to execu-

tion of a subcontract or a contract for the supply of materials that the amounts to be paid to such subcontractor or material supplier are not more than the rate prevailing in the locality for similar type labor and materials. If the determination of financial interest is made by the agency after work is performed or materials supplied under such contracts, the certificate of the mortgagor shall be executed prior to insurance endorsement of the mortgage by the Commissioner.

##### § 250.336 Certificate of actual cost—contents in general.

(a) Submission of certificate. The mortgagor's certificate of actual cost, in a form approved by the Commissioner, shall be submitted prior to endorsement and upon completion of the improvements to the satisfaction of the agency.

(b) Items to be included. The certificate shall show the actual cost to the mortgagor of:

(1) The cost plus construction contract, including the builder's fee actually paid and approved by the agency; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The offsite public utilities and streets not included in subparagraph (1) of this paragraph.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the agency.

(c) Items not to be included. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders, or partners. Any such payments, if included, shall be deducted from the cost determined under paragraph (b) of this section.

##### § 250.337 Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) In general. The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit or a cooperative mortgagor) an allowance for builder's and sponsor's profit and risk. The amounts of the allowance shall be dependent upon a determination by the agency as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) Identity of interest cases. Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 250.336(b)(1). This allowance shall be

10 percent of the actual cost, or such lesser amount as the Commissioner shall provide by subsequent amendment to these regulations. Actual cost shall be computed in accordance with § 250.336, excluding the following items:

(1) Any builder's fee actually paid and approved by the agency. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) Nonidentity of interest cases. Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost or such lesser amount as the Commissioner shall specify, computed in accordance with § 250.336, excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

##### § 250.338 Contractor's certification.

(a) Certification by general contractor. Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgage is required by the agency to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form approved by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) Certification by subcontractor. Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor,

materials, subcontractors, and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner or the agency, and it is determined by the agency that an identity of interest exists between the general contractor, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner or the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

##### § 250.339 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the agency, the Commissioner, or the General Accounting Office shall make available for examination such records including any collateral agreements.

##### § 250.340 Certificate of public accountant.

In all projects, the certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted audit standards to the extent deemed necessary to verify the actual costs.

##### § 250.341 Certification of actual cost—land value.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the agency's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to demolition and to the construction of the proposed on-site improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost. Provided, That in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

##### § 250.342 Reduction in mortgage amount—new construction.

If the principal obligation of the mortgage exceeds 90 percent of the



total amount as shown by the certificate of actual cost plus the value of the land, the mortgage shall be reduced by the amount of such excess, subject to the 100 percent limitation set forth at § 250.333(a)(3).

**§ 250.343 Reduction in mortgage amount—rehabilitation.**

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 250.337 and the applicable reduction in mortgage amount will be required. Such mortgage shall also be subject to the following limitations:

(a) Property held in fee. If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) Property subject to existing mortgage. If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the agency, the amount of the existing mortgage or 90 percent, subject to the 100 percent limitation set forth at § 250.333(a)(3), of the agency's estimate of the fair market value of the land and existing improvements prior to repair and rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

(c) Property to be acquired. If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the agency's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds 90 percent, subject to the 100 percent limitation set forth at § 250.333(a)(3), of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

**§ 250.344 Requisites of agreement and certification.**

Any agreement, undertaking, statement or certification required by § 250.333 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner, and may be relied upon by the Commissioner and the agency as a true

statement of the facts contained therein.

**§ 250.345 Cost certification incontestable.**

Upon the agency's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

**TITLE**

**§ 250.346 Eligibility of title.**

In order for the mortgaged property to be eligible for insurance, the agency must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the agency and the original endorsement of the credit instrument for insurance by the Commissioner will be evidence of its acceptability.

**§ 250.347 Title evidence.**

(a) Upon insurance of the mortgage, the mortgagor shall furnish to the agency a survey of the mortgaged property, satisfactory to the agency and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the agency deems satisfactory, title insurance cannot be furnished, the mortgagor shall furnish such evidence of title in accordance with paragraph (a)(2), (3) or (4) of this section, as the agency may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the agency. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the agency. The policy shall name as the insured the agency and the mortgagor as their interests may appear. The policy shall provide that upon acquisition of title by the agency, it will become an owner's policy running to the agency.

(2) An abstract of title satisfactory to the agency, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the agency as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project

involving rehabilitation where the mortgage does not exceed \$200,000.

**§ 250.348 Effect of amendments.**

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not adversely affect the interests of any agency or mortgagor under any contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of an agency or mortgagor on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

**Subpart D—Requirements Applicable to Mortgages Insured Under Section 221(d)(3) or 221(d)(4)**

**ELIGIBLE MORTGAGORS**

**§ 250.401 Eligible mortgagors.**

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) Nonprofit. The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the agency finds is in no manner controlled by, or under the direction of, persons of firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of States or agencies thereof, or the agency, as to rents, charges, and methods of operation.

(b) Limited distribution mortgagor. The limited distribution mortgagor may be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the agency) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation.

(c) Cooperative mortgagors. (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the agency which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the agency.

(2) Such a mortgagor will be regulated or restricted by the agency as to rents or sales, charges, rate of return, and methods of operation.

(d) General mortgagors. A general mortgagor shall be any mortgagor, approved by the agency, not meeting the eligibility requirements of paragraphs (a) through (c) of this section which, until the termination of all obligations of the agency and the Commissioner under the insurance contract and during such further period of time as

the agency shall be the owner or holder of the mortgage, is regulated or restricted by the agency as to rents or sales, charges, capital structure, rate of return, and methods of operation.

**MAXIMUM MORTGAGE AMOUNTS**

**§ 250.402 Maximum mortgage amounts.**

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) Dollar limitations on unit. For such part of the property attributable to dwelling use (excluding exterior land improvement) an amount per family unit, depending upon the number of bedrooms, which may be:

(i) For projects insured under Section 221(d)(3) of the Act:

- (A) \$16,860 without a bedroom
- (B) \$18,648 with one bedroom
- (C) \$22,356 with two bedrooms
- (D) \$28,152 with three bedrooms
- (E) \$31,884 with four or more bedrooms

(ii) For projects to be insured under Section 221(d)(4) of the Act:

- (A) \$18,450 without a bedroom
- (B) \$20,625 with one bedroom
- (C) \$24,630 with two bedrooms
- (D) \$29,640 with three bedrooms
- (E) \$34,846 with four or more bedrooms

(2) New construction. (i) In the case of new construction projects insured under Section 221(d)(3) of the Act and where the mortgagor is a nonprofit or cooperative, the agency's estimate of replacement cost of the property or project when the proposed improvements are completed. In the case of a nonprofit or cooperative project insured under Section 221(d)(4) of the Act, 90 percent of the agency's estimate of replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fee, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the agency. In addition to the foregoing items, a project reserve account not to exceed 5 percent of the total of all components of replacement cost exclusive of such account, may be included in the agency's estimate of replacement cost for a mortgage made by an agency recognized by the Commissioner as meeting the definition of a public housing agency in the U.S. Housing Act of 1937 as amended.

(ii) In the case of new construction under Section 221(d)(3) or 221(d)(4) where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the agency's estimate of the replacement cost of the property when the proposed improvements are completed. The replacement cost may in-

clude all items as described in (i) and shall include an allowance of 10 percent of those items exclusive of land unless the agency, after determining such allowance is unreasonable, prescribes a lesser percentage.

(3) Repair or rehabilitation. (i) In the case of a project which is to be repaired or rehabilitated and insured under Section 221(d)(3) of the Act and where the mortgagor is a nonprofit or cooperative, the sum of the estimated cost of the repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation. In the case of a nonprofit or cooperative project insured under Section 221(d)(4) of the Act, 90 percent of the sum of the estimated cost of repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs and rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation.

(b) Increased mortgage amount—elevator type structures. In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction, and rehabilitation design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraphs (a)(1) and (a)(2) of this section so as not to exceed:

- (1) For projects to be insured under Section 221(d)(3) of the Act:
  - \$19,680 per family unit without a bedroom
  - \$22,356 per family unit with one bedroom
  - \$20,496 per family unit with two bedrooms
  - \$33,120 per family unit with three bedrooms
  - \$33,400 per family unit with four or more bedrooms
- (2) For projects to be insured under Section 221(d)(4) of the Act:
  - \$20,962 per family unit without a bedroom
  - \$24,030 per family unit with one bedroom
  - \$29,220 per family unit with two bedrooms
  - \$37,800 per family unit with three bedrooms
  - \$41,494 per family unit with four or more bedrooms

(c) Increased mortgage amount—high cost areas. (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, but not to exceed 50

percent, the dollar limitations set forth in this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifices of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section the principal obligations of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) Maximum mortgage amount—leaseholds. The value or replacement cost on which the mortgage amount is based will be limited by the value or replacement cost of the leasehold estate, which shall be the value or replacement cost of the project in fee simple less the value of the leased fee. The value of the leased fee shall equal the market value of the site in fee simple before construction of on-site or offsite improvements. Where the lease provides for increasing ground rents over the term of the mortgage, the initial ground rent may not exceed the market value of the site "as is" in fee simple multiplied by 90 percent of the interest rate of the insured mortgage.

**§ 250.403 Adjusted mortgage amount—rehabilitation projects.**

A mortgage having a principal amount computed in compliance with this part, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) Property held in fee. If the mortgagor is the owner of an unencumbered fee simple estate, the maximum mortgage amount shall not exceed 100 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation;

(b) Property subject to existing mortgage. If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) Nonprofit or cooperative mortgagor. If the mortgagor is a nonprofit or cooperative, and the project is insured under Section 221(d)(3) of the Act, the agency's estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. In the case of projects insured under Section 221(d)(4) of the Act, the Agency's estimate of the cost of the repairs or rehabilitation plus such por-



tion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repairs or rehabilitation.

(2) General or limited distribution mortgagor. If the mortgagor is a general or limited distribution mortgagor, the agency's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(c) Property to be acquired. If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) Nonprofit or cooperative. If the mortgagor is a nonprofit or cooperative, and the project is insured under Section 231(d)(3) of the Act, the agency's estimate of the cost of the proposed repairs or rehabilitation plus the lesser of either of the following:

(i) The actual purchase price of the land and improvements.

(ii) The agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. If the project is to be insured under Section 221(d)(4), 90 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation plus 90 percent of the lesser of the actual purchase price of the land and improvements or the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(2) General or limited distribution mortgagor. If the mortgagor is a general or limited distribution mortgagor:

(i) 90 percent of the agency's estimate of the cost of the repair or rehabilitation, plus

(ii) 90 percent of the lesser of the actual price of the land and improvements, or the agency's estimate of value of such land and improvements prior to the repair or rehabilitation.

#### Subpart F—Contract Rights and Obligations

##### § 250.701 Definitions.

As used in this subpart the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan

is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) "Contract of coinsurance" means the agreement between the agency and the Commissioner for the coinsurance of a mortgage evidenced by the endorsement of the credit instrument by the Commissioner and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) "Mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "MIP" means the mortgage insurance premium paid by the agency to the Commissioner in consideration of the contract of coinsurance.

##### § 250.703 Creation of contract of coinsurance.

(a) This subpart shall constitute the contract of coinsurance and the agency and the Commissioner shall be bound by the regulations in this subpart with the same force and effect and to the same extent as if a separate contract had been executed.

#### MORTGAGE INSURANCE PREMIUMS

##### § 250.705 Amount of MIP to be collected from the mortgagor.

HUD will collect from the agency a MIP from the date of the contract of coinsurance which shall not exceed the following schedule based on the amount of the principal obligation of the mortgage outstanding at any time without taking into account delinquent payments or prepayments. The agency in turn may collect such premium from the mortgagor:

(a) The MIP shall be the equivalent of 0.5 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 81 percent and 90 percent of such loss;

(b) The MIP shall be the equivalent of 0.4 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 71 percent and 80 percent of such loss;

(c) The MIP shall be the equivalent of 0.3 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 61 percent and 70 percent of such loss;

(d) The MIP shall be the equivalent of 0.25 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted

mortgage is between 10 percent and 60 percent of such loss.

##### § 250.706 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the agency in cash. The MIP will be paid annually on a level percentage of the declining principal balance.

##### § 250.707 Annual payment of MIP on a level percentage of the declining principal balance.

(a) The agency shall pay to the Commissioner on the effective date of the contract of coinsurance, a first year mortgage insurance premium covering a period of one year, equal to the percentage set forth at Section 250.705 of the outstanding principal balance of the mortgage. Each year thereafter, the agency, on the anniversary date of the contract of coinsurance shall pay a premium for the following year, equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

(b) For operating loss loans made pursuant to § 250.320, the agency shall pay to the Commissioner, upon the endorsement of the credit instrument covering the operating loss loan, a first year mortgage insurance premium, covering a period of one year, equal to the percentage set forth in Section 250.705 of the outstanding principal balance of the mortgage. Each year thereafter, the agency shall pay a premium for the following year, equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

##### § 250.710 Duration of MIP.

The MIP required under § 250.707 shall continue annually until the earliest date on which one of the following occurs:

(a) The mortgage is paid in full,

(b) A deed to the agency is filed for record, or

(c) The contract of coinsurance is otherwise terminated with the consent of the Commissioner.

#### DEFAULT UNDER THE MORTGAGE

##### § 250.715 Definition of default.

The following shall be considered a default under this subpart:

(a) Failure of the mortgagor to make any payment due under the mortgage;

(b) Failure of the mortgagor to perform any other covenant under the provisions of the mortgage, if the agency, because of such failure has accelerated the debt; or

(c) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage, which shall be considered a default under both the loan and the original mortgage.

##### § 250.716 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the mortgagor when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

##### § 250.717 Notice of default.

The agency shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

##### § 250.718 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred. The mortgagor shall pay to the agency such expenses as the agency has incurred in connection with the foreclosure proceedings and the agency shall give written notice of reinstatement to the Commissioner.

##### § 250.719 Forbearance relief.

Notwithstanding the provisions of § 250.720 of this subpart, a mortgagor and an agency may enter into an agreement, not inconsistent with any provision of this part other than § 250.720, for the reduction or suspension of regular mortgage payments: *Provided*, That during such period of forbearance, all moneys received from rents or other sources must be applied toward the payment of operating costs, and not dividends.

##### § 250.720 Special forbearance agreement.

(a) In a case where the mortgage is in default, but the mortgagor has made at least 50 percent of its scheduled monthly mortgage payments on a cumulative basis for a period of not less than one year, the mortgagor and the agency may enter into a special forbearance agreement for the reduction of regular mortgage payments for a specified period of time, if the agency determines that the default is due to circumstances beyond the mort-

gagor's control and the mortgage probably will be restored to good standing within a reasonable period of time.

(b) If the mortgagor fails to meet the requirements of a special forbearance agreement entered into under this section or to resume the regular monthly payment required under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the agency shall notify the Commissioner of such failure.

(c) A special forbearance agreement entered into under this section shall require the mortgagor to use all moneys received from rents or other sources toward payment of operating costs, and not dividends, during the period in which the advances described in § 250.723 are being made.

#### ADVANCES BY COMMISSIONER TO AGENCY

##### § 250.723 Advance to agency.

(a) The Commissioner may make an advance to an agency which has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(b) Terms of advance: (1) The amount of an advance authorized by paragraph (a) of this section, shall not exceed one-half of the short-fall in debt service for a 36-month period (which need not occur consecutively), but in no case shall it exceed 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(2) The Commissioner may make quarterly payments of the amount of an advance to an agency authorized by this section and each quarterly payment shall not exceed that amount required to cover, for a 3-month period, 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(3) The agency shall execute a note payable to the Commissioner for the amount of each quarterly payment authorized by paragraph (b)(2) of this section which note shall provide for interest at the debenture rate established pursuant to § 250.742.

(4) The note shall also provide that:

(i) If the agency makes a claim for insurance benefits on account of a loss sustained with respect to a mortgage which has been the subject of a special forbearance agreement pursuant to the provisions of § 250.720, the Commissioner will debit that claim by the amount of any advances made on account of that mortgage (pursuant to

this section) which have not been repaid plus the accrued interest.

(ii) If the default in a mortgage is cured, the agency will repay the advance plus interest to the Commissioner over a period of time not to exceed the remaining term of the mortgage.

(iii) Any payments made by a mortgagor under a special forbearance agreement to bring a mortgage which has been the subject of an advance pursuant to this subsection into good standing shall be divided equally between the agency and the Commissioner until that portion of the advance made by the Commissioner is repaid in full.

(iv) If the contract of coinsurance for the mortgage on which the advance was made shall be terminated in accordance with §§ 250.726 through 250.728, the note evidencing such advance shall remain in full force and effect and payable in accordance with its terms.

#### TERMINATION

##### § 250.726 Termination of coinsurance contract.

The contract of coinsurance for each individual mortgage shall be terminated if:

(a) The mortgage is paid in full prior to its maturity;

(b) The agency acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits will be made;

(c) After completion of foreclosure the property is redeemed;

(d) The property is bid in and acquired at foreclosure sale by a party other than the agency; or

(e) The mortgagor and agency jointly request termination.

##### § 250.727 Notice and date of termination by Commissioner.

The Commissioner shall notify the agency that the contract of coinsurance on a mortgage has been terminated and the effective termination date. The termination date shall be the last day of the month in which any one of the following events occurs:

(a) The date foreclosure proceedings were instituted, or the property was otherwise acquired by the agency, if the agency notifies the Commissioner that no claim for insurance benefits will be made;

(b) The date the mortgage was repaid in full;

(c) The date a voluntary termination request is received by the Commissioner.

##### § 250.728 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all



rights of the mortgagor and agency shall be terminated.

#### CLAIM PROCEDURE

##### § 250.730 Acquisition of property.

At any time after the default of the mortgage and the determination by the agency to accelerate the total principal amount of the mortgage, the agency, at its election, shall (if no other eligible entity has assumed the obligations of the mortgagor) either (a) commence foreclosure of the mortgage; or (b) acquire possession of and title to the mortgaged property by means other than foreclosure. The agency shall notify the Commissioner of its action at the time it makes its election either to commence foreclosure of the mortgage or acquire possession and title by other means.

##### § 250.731 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the agency may acquire the property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

- (a) The mortgage is in default at the time the deed is executed and delivered;
- (b) The credit instrument is cancelled and surrendered to the mortgagor;
- (c) The mortgage is satisfied of record as a part of the consideration for such conveyance; and
- (d) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

##### § 250.732 Notice to Commissioner.

At the time the agency acquires title to the property, it shall give written notice to the Commissioner of its intention with respect to the filing of a claim for insurance benefits.

#### PAYMENT OF INSURANCE BENEFITS

##### § 250.734 Method of payment.

Payment of all insurance claims shall be made in cash unless the agency files a written request for payment in debentures.

##### § 250.738 Amount of payment.

(a) Upon acquisition of title to a property securing a defaulted mortgage in accordance with § 250.730, the agency shall be entitled to file a claim for the initial payment of insurance benefits. Such payment shall be in an amount equal to the product of the coinsurance factor multiplied by 75 percent of the difference between the unpaid principal balance of the mortgage on the date of the institution of

foreclosure proceedings or on the date of acquisition of the property otherwise after default and the appraised value of the property obtained in accordance with § 250.739(a). The coinsurance factor shall be equal to the percentage of total coinsurance loss which the Commissioner is obligated to absorb, pursuant to the application for insurance endorsement and the schedule of coinsurance coverage and applicable premiums set forth in § 250.705.

(b) Upon disposition of the property or upon the expiration of 12 months from the date of acquisition of the property, whichever occurs earlier, the agency shall file a claim for the final payment of insurance benefits. Such payment shall be in an amount which, when added algebraically to the amount of initial payment computed pursuant to § 250.738(a), will equal the total amount of insurance benefits computed pursuant to § 250.738(d). If the total benefits exceed the initial payment, the Commissioner will make a payment to the agency for the difference. If the initial payment exceeds the total benefits, the Commissioner will bill the agency for the difference. If the initial payment equals the total benefits, neither a payment nor a bill will be sent to the agency.

(c) The base amount for the computation of total insurance benefits shall be the sum of the unpaid principal balance of the mortgage on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, plus the sum of all of the items set forth at § 250.740, less the sum of all of the items set forth at § 250.741.

(d) The total amount of insurance benefits shall be equal to the product of the coinsurance factor cited at § 250.738(a) multiplied by the base amount computed pursuant to § 250.738(c), such product to be reduced by any balance of principal or interest due on a note from the agency to the Commissioner for advances made to the agency on a defaulted mortgage pursuant to § 250.723(b)(4)(i). In no case, however, may the total amount of insurance benefits exceed the Commissioner's share of coinsurance liability times the outstanding principal balance at the time of default.

##### § 250.739 Disposition of property.

(a) Upon the acquisition of title to the property securing a defaulted mortgage in accordance with § 250.730, the agency shall obtain an appraisal of the property by an independent appraiser selected by the agency and approved by the Commissioner. The appraisal shall reflect the market value of the property, as of the date of ac-

quisition, for use for the market originally intended.

(b) After the agency sells the property, or after the expiration of 12 months, whichever occurs earlier, the agency shall file a claim for the final payment of insurance benefits, pursuant to § 250.738(b).

(c) Upon making a claim to the Commissioner for the final payment of the insurance benefits, the agency shall notify the Commissioner, on an approved form, of the sale of the property, the purchase price, and income and expenses incurred in connection with the acquisition, repair, operation and sale of the property, and shall assign to the Commissioner, without recourse on warranty, any and all claims (other than the mortgage financing such sale) which the agency has acquired in connection with the transaction.

(d) If disposition of the property has not occurred by the date of the agency's claim for final payment, the agency shall utilize, in preparing such claim, the appraised value of the property obtained pursuant to § 250.739(a), in lieu of the net sale proceeds required by § 250.741(f).

##### § 250.740 Items added to principal in computing claim payment.

The sum of the following items shall be added to the unpaid mortgage principal in computing the base amount for the computation of insurance benefits, pursuant to § 250.738(c):

(a) The amount of all payments made by the agency for taxes, special assessments and water rates which are liens prior to the mortgage; for fire and hazard insurance on the property; and for any mortgage insurance premiums paid after default;

(b) An amount equivalent to debenture interest at the rate established pursuant to § 250.742 on the principal of the mortgage unpaid on the date of the institution of foreclosure proceedings or on the date of the acquisition of the property otherwise after default, from the date of default to the date of acquisition of title; except that debenture interest shall not be payable for any period for which the agency receives mortgage interest during a forbearance agreement as provided in paragraph (c) of this section;

(c) The amount of the unpaid mortgage interest computed from the date of default to the date of acquisition of title in those cases where a forbearance agreement in accordance with § 250.719 has been executed;

(d) An amount equivalent to mortgage interest on the difference between the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, and the amount in-

cluded in the initial payment of insurance benefits made pursuant to § 250.738(a), from the date of acquisition of the property to the date of final payment of insurance benefits.

(e) Foreclosure costs or costs of acquiring the property otherwise actually paid by the agency and approved by the Commissioner, in an amount not in excess of two-thirds of such costs;

(f) Reasonable payments made by the agency for:

- (1) Preservation, operation, and maintenance of the property;
- (2) Repairs necessary to meet the objectives of the HUD Minimum Property Standards, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner;
- (3) Expenses in connection with the sale of the property.

##### § 250.741 Items deducted from principal in computing claim payment.

The sum of the following items shall be deducted from the unpaid mortgage principal in computing the base amount for the computation of insurance benefits, pursuant to § 250.738(c):

(a) All amounts received by the agency on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All cash held by the agency or its agents or to which it is entitled, including deposits made for the account of the mortgagor.

(c) All funds held by the agency for the account of the mortgagor received pursuant to any other agreement.

(d) The amount of any undrawn balance under a letter of credit accepted by the agency in lieu of a cash deposit for an escrow agreement.

(e) Any net income received by the agency from the property securing the mortgage after the date of default.

(f) The net proceeds from the sale of the project, except that if the agency sells the project for an amount less than the appraised value on a negoti-

ated sale the amount to be deducted will be the appraised value. If the property is sold on the basis of a competitive bidding procedure approved by the Commissioner, the net sale proceeds will be deducted notwithstanding that it is lower than the appraised value. If the property has not been disposed of within 12 months from the date of acquisition, the agency shall substitute the appraised value of the property for the net sale proceeds in preparing the claim for final payment of insurance benefits, pursuant to § 250.739(d).

##### § 250.742 Debentures.

All of the provisions of § 207.259(e) of this chapter shall apply to mortgages coinsured under this subpart.

#### AMENDMENTS

##### § 250.743 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of an agency under the contract of coinsurance on any mortgage already coinsured and shall not adversely affect the interest of an agency on any mortgage to be coinsured on which the Commissioner has made a commitment to insure.

(Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 31, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing,  
Federal Housing Commissioner.

[FR Doc. 78-35690 Filed 12-28-78; 8:45 am]



FRIDAY, DECEMBER 29, 1978

PART VII



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**DEPARTMENT OF  
HOUSING AND  
URBAN  
DEVELOPMENT**

**EXISTING HOUSING**

**Section 8 Housing Assistance  
Payments Program; Miscellaneous  
Amendments**

Register  
Federal Property



[4210-01-M]

# Title 24—Housing and Urban Development

## CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R78-469]

### PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

#### Miscellaneous Amendments

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing a final rule with respect to miscellaneous amendments to the Section 8 Housing Assistance Payments Program—Existing Housing. This rule simplifies certain administrative procedures, increases operating flexibility, clarifies program provisions, and:

- (1) Establishes Independent Group Residences as an eligible type of housing for elderly, handicapped and disabled individuals residing in group residences where supportive services are provided; and
- (2) Encourages owner participation by revising the security deposit policies and deleting 2 program forms.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Louise Kleffner, Chief, Existing Housing Branch, Office of Assisted Housing Development, Housing, Department of Housing and Urban Development, Washington, D.C. 20410. (202) 755-5380. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On July 6 (42 FR 34652 and 34656) and October 21, 1977 (42 FR 56292), proposed and interim revisions to the Section 8 Existing Housing Program regulations, 24 CFR Part 882, were published in the FEDERAL REGISTER for public comment. Interested parties were given until August 5, 1977 and November 21, 1977, respectively, to submit written comments on the July 6 and October 21 publications. By the end of the comment period, 13 comments were received concerning the July 6, 1977 proposed rule, 5 comments were received in response to the July 6, 1977 interim rule, and 98 comments were received in response to the October 21, 1977 proposed rule. All comments were carefully considered, and changes have been made to the proposed and interim regulations

based on these comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

PROPOSED RULE PUBLISHED JULY 6, 1977

One comment was received concerning the use of Recently Completed Housing rents for conversion of Section 23 projects (Section 882.101) which suggested that to facilitate conversions, Recently Completed Housing rents should be allowed regardless of the age of the building. The Department is now preparing new regulations for conversions which will address this issue and other policy issues surrounding the conversion of Section 23 projects to the Section 8 program. Accordingly, this comment is not being accepted. However, the proposed change to § 882.101(b)(7) is being adopted to clarify that the phrase "prior to the leasing thereof" means "prior to the leasing thereof under this Part."

These final rules adopt without change the proposed (1) revision of the definition of Congregate Housing to refer to the Housing Quality Standards for Congregate Housing, (2) addition of a sentence to § 882.107(b) to make it clear that the owner and family determine the term of the lease, and (3) addition of housing discrimination complaint forms to the Certificate holder's packet in § 882.209(b)(5). No comments were received on these matters.

Although no comments were received objecting to the proposed revision of § 882.108, "Rent Adjustments," which emphasized the applicability of the rent reasonableness limitation, the Department has determined to establish a uniform method of adjusting Section 8 Contract Rents. Therefore, the final rule requires that for Housing Assistance Payments Contracts entered into after the effective date of this final rule, annual adjustments to Contract Rents will be based on the most recently published Section 8 Annual Adjustment Factors (24 CFR 888). Different Adjustment Factor schedules will be provided for twenty-three Standard Metropolitan Statistical Areas and for four Census Regions on the basis of changes in the Consumer Price Index for rents and utilities.

For Housing Assistance Payments Contracts entered into prior to the effective date of this final rule, annual adjustments may continue to be based on the percentage of change in the applicable published Fair Market Rents (with an appropriate reduction in the adjustment where utilities are paid directly by the family). However, for such Contracts, it is expected that Public Housing Agencies (PHAs) will use the published Section 8 Annual

Adjustment Factors as a guide in determining the reasonableness of owner's Contract Rents and the schedule of allowances for utilities and other services for tenant-paid utilities.

The new method of adjusting Contract Rents will be simpler for PHAs to administer since it will not be necessary to calculate the percentage change between applicable Fair Market Rent schedules, and further, the data used to update the Fair Market Rents and establish the Annual Adjustment Factors is generally the same. The final rule also emphasizes that annual adjustments are still subject to the rent reasonableness and Fair Market Rent limitations.

The revisions proposed to §§ 882.109(m) and 882.112(a) concerning Congregate Housing and security deposits will be addressed in the discussion of the October 21, 1977 proposed regulations below. The changes proposed to § 882.120 have been revised to provide that the rent adjustments for Recently Completed Housing are also based on the Section 8 Annual Adjustment Factors (24 CFR Part 888) and that all adjustments are subject to the Fair Market Rent limitations and rent reasonableness test.

A comment on the proposed § 882.205(b) stated that the language was not specific enough on multi-jurisdictional applications concerning which chief executive officers should be given the opportunity to comment. We have retained the original language which we believe to be sufficiently specific since it clearly states that the chief executive officers of "localities which are identified as primary areas from which families to be assisted will be drawn" are sent notifications. For example, where assistance to several counties is involved, not only the chief executive officers of the counties but of each jurisdiction within the counties, which is identified as a primary area on the application, will be notified of the application and given the opportunity to comment.

Several comments were received on the proposed revisions to § 882.209(a). Most comments suggested that we allow the PHA the flexibility of issuing either a 0-bedroom or 1-bedroom Certificate to elderly or handicapped individuals rather than requiring that a 0-bedroom Certificate be issued unless the PHA's program has no 0-bedroom units. We have determined that it is in the best interest of the government to provide the minimum subsidy necessary to house individuals adequately. Since the program does not provide for other family sizes to receive assistance for housing larger than necessary, it would not be appropriate to provide this additional assistance to single individuals. Since there

is provision for single individuals to receive a 1-bedroom Certificate in § 882.209(a)(2)(iv) if the PHA can document that local circumstances warrant such a variation, we have determined to adopt the proposed language in the final rule with the clarification that a 2-bedroom unit may be approved for an elderly, handicapped or disabled individual planning to live with an unrelated person essential to his or her care or well-being.

INTERIM RULE PUBLISHED JULY 6, 1977

The majority of the changes implemented by this rule deal with the elimination of Appendices I through V. No comments were received objecting to the deletions; therefore, Appendices I through V are deleted and Appendices VI and VII have been renumbered as I and II.

Several comments recommended adoption of the interim amendment to § 882.106(a)(4) which allows HUD field offices to authorize a PHA to approve Gross Rents up to 20 percent above the applicable Fair Market Rents for specific neighborhoods or to meet the unique needs of particular families. The Department has determined to further study the application of this provision and is therefore reserving a final decision on this issue and would take into consideration further public comments. We are publishing § 882.106(a)(4) as part of 24 CFR part 882; however, this publication does not affect its interim status.

No comments were received objecting to the elimination of the HUD form for lease approval and disapproval and we are, therefore adopting the interim rule revising § 882.210 as a final rule. Additionally, we are eliminating the requirement that the notification of lease approval be retained in the tenant file since a copy of the approved lease and Housing Assistance Payments Contract should suffice to indicate that the lease was approved.

PROPOSED RULE PUBLISHED OCTOBER 21, 1977; INDEPENDENT GROUP RESIDENCE DEFINITION

Several comments and suggestions were received with respect to the definition of Independent Group Residence in § 882.102. This definition has been revised and reorganized to include language which was contained in § 882.110(b)(1) of the proposed regulations concerning these Residences.

Several comments asked why publicly owned housing could not be utilized as an Independent Group Residence since some units of local government have purchased housing for this purpose. Another comment requested clarification as to whether or not all residents of an Independent Group Residence had to be Section 8 recipients. Numerous comments were also

received with respect to the maximum number of individuals residing in an Independent Group Residence. It was suggested that a maximum of sixteen individuals was too restrictive and would exclude use of dormitories and hotels. Other comments noted that a number smaller than sixteen would be preferable although the proposed limitation did allow flexibility. In addition, several respondents incorrectly interpreted this restriction to apply to the number of people in an apartment complex or building rather than in the unit.

In response to these comments the definition of Independent Group Residence has been revised to delete the requirement of this type of housing be privately owned, and to restrict occupancy in a unit to groups of two to twelve individuals, not including Resident Assistant(s). The Department has determined that a limitation on the number of occupants is necessary and consistent with the objectives of deinstitutionalization of the elderly, handicapped and disabled requiring supportive services into community based residential settings. Since publication of the proposed regulations, the Department has determined that group homes for the handicapped constructed under Section 202 of the Housing Act of 1959 should not accommodate more than twelve residents, and these amendments to Part 882 are being conformed accordingly. In addition, a unit must house at least two occupants, not including Resident Assistant(s), to be considered an Independent Group Residence for purposes of this program.

The general exclusion of dormitories, hotels and rooming houses is intentional since facilities of this type are generally large enough to be institutional in nature and not representative of typical residential housing available in a community which is intended to be used for this aspect of the Section 8 program. Independent Group Residences are intended to provide a housing alternative to institutional care for handicapped and disabled persons who can reasonably be expected to advance to greater levels of independent living, and to provide suitable housing for the elderly who cannot live completely independent and would benefit from group interaction, but do not require the services typically provided in nursing homes.

The definition of Independent Group Residence has also been amended to allow elderly, handicapped, or disabled individuals not eligible for or not receiving Section 8 assistance to reside in the unit. This change will allow Certificate holders to reside in group homes which meet the program requirements for Independent Group Residences but which

also have occupants not receiving Section 8 assistance. It will also allow an elderly, handicapped, or disabled person not receiving Section 8 assistance to move into a unit which qualifies as an Independent Group Residence when a vacancy occurs. The proposed definition has also been revised by deleting the specific discussion of supportive services now covered in § 882.109(n)(6), "Housing Quality Standards."

#### RESIDENT ASSISTANT

Several comments concerning the definition of Resident Assistant in Section 882.102 reflected a need to clarify what the responsibilities of the Resident Assistant are and whether a Resident Assistant is required in each Independent Group Residence. A few comments also questioned why the Resident Assistant could not be related by blood, marriage, or operation of law to the individual receiving Section 8 assistance.

The definition of Resident Assistant has been clarified to indicate that this individual lives in the Independent Group Residence and provides, on a daily basis, some or all of the types of supportive services listed in § 882.109(n)(6). However, the Housing Quality Standards for an Independent Group Residence do not require a live-in Resident Assistant, and similar to the concept of a Resident Manager, the term Resident Assistant only applies to individuals who live in the Independent Group Residences. It is acceptable for an Independent Group Residence not to have a live-in Resident Assistant.

With respect to the prohibition that the Resident Assistant not be related to the Section 8 recipients, the Department has determined that it would be in the public's best interest not to change this provision since it prevents potential program abuses resulting from providing rent free housing to ineligible family members subsidized in effect by the assisted family member. If a family member can provide the necessary supportive services to a handicapped or disabled person and the income of that family is within the income limits, that family may receive Section 8 subsidy as a family without being housed in an Independent Group Residence. Such an arrangement would be preferable to housing the family in an Independent Group Residence since the income of all family members would then be considered in establishing eligibility and the rent.

The proposed provisions regarding the income of the Resident Assistant and computation of the individual's contribution toward the rent have been moved to § 882.106(c), "Contract Rents."



## SERVICE AGENCY

There were several comments regarding the proposed definition of Service Agency which provided that this organization determine and monitor the supportive service needs of occupants of Independent Group Residences. Several comments recommended that Service Agencies not be permitted to monitor the supportive services which they provide, and asked for clarification as to whether PHAs could function as Service Agencies, and whether Service Agencies could own or sublease an Independent Group Residence. Comments also recommended that the Service Agency be approved and monitored by an appropriate department of the State, such as the Department of Human Resources or Department of Mental Health and Mental Retardation, rather than by the PHA, and that a written contract with respect to the services be required between the PHA and the Service Agency.

The definition of Service Agency in § 882.102 has been revised accordingly to clarify that a Service Agency may own or sublease an Independent Group Residence. The PHA administering the Housing Assistance Payments Contract is prohibited from providing management or supportive services in § 882.117, "Responsibilities of the Owner." It is anticipated, however, that this section will soon be revised to permit PHA management responsibilities under certain circumstances. In addition, the proposed regulations have been revised to require that the State, rather than the PHA, determine that the Service Agency is qualified and to clarify that the Service Agency may perform direct outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance.

The recommendation for a written contract has also been accepted; § 882.210(f), "Request for Lease Approval," and § 882.109(n), "Housing Quality Standards," have been revised to require that the lease incorporate by reference the supportive services to be provided in accordance with the written Service Agreement provided by the State between the Owner and the Service Agency and/or other entities providing these services. If the Service Agency and/or other entity is providing services and also acting as lessor, a separate Service Agreement is not necessary and the supportive services to be provided will be incorporated into the lease and the services provisions will be approved by the State. In addition, Service Agencies are prohibited from monitoring services which they provide pursuant to § 882.109(n)(6). The State and PHA do the monitoring.

## RULES AND REGULATIONS

The Department recognizes the inherent difficulties in providing "continuous supportive services" over extended time periods. To address this situation, PHAs are strongly encouraged to provide support and incentives to ensure the continued stable operation of individual Independent Group Residences. Such support may include:

1. Subcontracting with Service Agencies for outreach activities to owners and eligible individuals in locating appropriate applicants and dwellings for Independent Group Residences. This may involve the PHA paying for such services from funds received as preliminary fees for administration, and
2. Providing assistance to Service Agencies in locating and obtaining support services or providing administrative support as appropriate.

## FINDERS KEEPERS POLICY AND MOBILITY

Several comments were also received regarding the advantages and disadvantages of providing the subsidy to the Independent Group Residence or to the Section 8 recipient. Consistent with the Section 8 Existing Housing Program's "finder-keepers" policy which allows Certificate Holders to select the housing unit of their choice, we are retaining the provision in § 882.103, "Finders-Keepers Policy," which will provide the subsidy to the individual. In this way, an individual will be able to leave the Independent Group Residence whenever he or she chooses to move to another unit, such as a unit where supportive services are not provided or to an Independent Group Residence providing less supervision.

To allow mobility, § 882.209, "Certificates of Family Participation," is being revised to require that the PHA issue a 0-bedroom Certificate for each individual who wishes to reside in an Independent Group Residence, and that separate leases and Housing Assistance Payments Contracts also be executed for each such individual. Since mobility opportunities for individuals in Independent Group Residences may create problems in operating Group Residences, §§ 882.102 and 882.106(c) have also been revised to allow individuals not receiving Section 8 assistance to reside in Independent Group Residences to minimize the financial impact of Section 8 recipients moving and the need for relocation of the remaining members of the group in accordance with § 882.213, "Overcrowded or Under Occupied Units." In addition, § 882.209, "Certificates of Family Participation," of the final rule requires that if a Section 8 recipient moves from an Independent Group Residence, PHAs must give a preference in issuing a Certificate to an applicant who has indicated the

desire to reside in an Independent Group Residence. Use of this preference is subject to the availability of funds for an appropriately sized unit, and the Certificate holder does not have to move into an Independent Group Residence in which a vacancy has occurred. Although this change does not guarantee that a new Section 8 Certificate holder will replace the Section 8 recipient who moved, it does address the concerns expressed by both sponsors and potential providers of support services about the viability of Independent Group Residences. This issue is discussed in more detail in the Section of the Preamble entitled "Overcrowded or Under Occupied Units."

## FAIR MARKET RENTS

A large number of comments were received in response to the Fair Market Rent schedule applicable to Independent Group Residences which was contained in § 882.110 of the proposed regulations. Numerous comments objected that the proposed regulation would encourage Independent Group Residences consisting of seven or more bedrooms since substantially higher rents were allowed for these larger units. It was suggested that the rents applicable to efficiency or 1-bedroom units should be allowed for each individual or each bedroom in an Independent Group Residence, regardless of size.

Several comments were also received suggesting that the cost of supportive services should be included in the rent and thus funded through Section 8 housing assistance. In contrast, a few comments supported the restriction that housing funds could not be used to subsidize social service programs since such use would be short-lived, cause problems in responsibility and accountability, and would defeat long-term strategies of cooperation between housing and service agencies.

Two additional comments noted that based on an eligible individual's income from Supplemental Security Income (SSI) benefits, ten to twelve individuals residing in a 6-bedroom Independent Group Residence in certain localities would not receive any housing subsidies since their collective contribution towards the rent would exceed the maximum Fair Market Rent allowable. This may also occur in group homes housing two individuals in each bedroom in localities where the SSI payments are supplemented by the State and/or the housing costs are relatively inexpensive. In such cases, since the individuals can afford the rent collectively without subsidy, with each individual contributing up to 25 percent of his or her income toward the rent, there is no need for subsidizing their rent.

The Fair Market Rents for the Section 8 Existing Program represent the rents necessary to lease privately-owned existing, standard rental housing of a non-luxury nature. This program is not intended to provide the rents necessary to purchase, construct, or extensively rehabilitate housing, and leasing of Independent Group Residences will depend on the availability of rental apartments and single-family homes of appropriate size and quality within the Fair Market Rent limitations.

Although the Department recognizes that all or some of the types of supportive services listed in § 882.109(n)(6) may be necessary and required in Independent Group Residences, it is not considered appropriate to fund such services with Section 8 housing assistance payments. The regulations, therefore, retain the requirement that the Fair Market Rents be based on the unit size, i.e., the number of bedrooms within the unit, including one bedroom for a live-in Resident Assistant(s). To provide a 0-bedroom rent per individual or per bedroom would result in rents which would be excessive for the housing provided and would, therefore, result in the funding of services for residents. It is possible, however, for Area Offices to approve Gross Rents of up to 20 percent above the published Fair Market Rents on a case-by-case basis to meet the unique housing needs of specific individuals. If such an approval is authorized based on the needs of one or more individuals, a Gross Rent up to 20 percent above the applicable published Fair Market Rent may be approved by the PHA for an Independent Group Residence. It is anticipated that this allowable increase will be sufficient to cover any increased maintenance or management expenses associated with Independent Group Residences.

In addition, we have eliminated the different Fair Market Rent calculation systems for units of seven or more bedrooms, and Fair Market Rents for 7-bedroom units and larger will be established.

The provisions regarding Fair Market Rents have been transferred to § 882.106(c), "Contract Rents," and provides that each individual be issued a 0-bedroom Certificate and that the housing assistance payment on his or her behalf be based on a prorata share of the Gross Rent for the unit which must be within the Fair Market Rent limitations for the unit size. To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other than the Resident

Assistant(s), if any, who occupies no more than 1-bedroom.

The Department realizes that the available local and federal funding resources for supportive services in Independent Group Residences are limited. However, HUD's role with respect to subsidized housing has traditionally been to provide decent, safe and sanitary housing to lower income families at a rent they can afford. If supportive services were to be included as a rental cost, the number of units which could be assisted under the Section 8 program would be reduced. We, therefore, do not consider it feasible or appropriate to fund services within the limited Section 8 resources. We are, however, initiating discussions with the Department of Health, Education and Welfare concerning possible funding sources for supportive services.

## CONGREGATE HOUSING

Several comments were received concerning the proposed Housing Quality Standards for Congregate Housing. Concern was expressed that the refrigerator, central dining, and bathroom requirements were too restrictive. It was recommended that the regulations be revised to allow two units to share a bathroom; to permit the central dining facility to be located in the apartment complex rather than in each building, and not be restricted to the exclusive use of the residents since this would prohibit operating meal programs under Title VII of the Older Americans Act; and to delete the requirement that a refrigerator be provided in each unit if three meals a day are provided or the residents have access to an adequate number of community refrigerators.

Section 882.109(m) which contains the Housing Quality Standards for Congregate Housing has been revised to allow the central dining facility to be located within the building or housing complex and to require that the central dining facility be for the primary use of the residents and of sufficient size to accommodate the residents. The requirements that each unit contain a bathroom and refrigerator have not been deleted since generally congregate units are self-contained apartments with a limited kitchen area and from one to three meals a day are prepared and served in a central dining facility. An individual refrigerator in each unit is desirable so residents can prepare meals and/or snacks and refrigerate medicines, if necessary, and perishable food items. Since congregate units most closely resemble efficiencies and 1-bedroom units, these Fair Market Rents are applicable to congregate housing. By removing the refrigerator and bathroom requirements, you would no longer have individual apartments but rather

a group home arrangement which is covered by Independent Group Residences.

## INDEPENDENT GROUP RESIDENCE HOUSING QUALITY STANDARDS

Concerning the physical requirements for Independent Group Residences, several comments were received as follows: (1) There is no need to post an emergency exit plan and fire inspection schedule; (2) Independent Group Residences should be in community based residential settings, similar in size and appearance to housing generally found in the neighborhood, and accessible to amenities and supportive services; (3) Independent Group Residences should contain adequate social and/or recreational space; (4) it should be clarified that the living room, bathroom, etc., must be in the unit rather than just accessible; (5) counseling services should be included in the list of supportive services; (6) it should be clarified that all of the listed supportive service examples are not mandatory; (7) occupancy should not be restricted to a maximum of two persons per bedroom; (8) limitation of one bathroom for four persons will eliminate use of dormitories and some houses; (9) controls should be developed to prevent an overconcentration of Independent Group Residences in any particular block or neighborhood; (10) all Independent Group Residences should be accessible to the handicapped regardless of whether there are any immediate plans to house handicapped individuals; and (11) the requirement of a continual planned program of supportive services should be clarified or deleted.

The recommendations described in comments 1-6 are being incorporated into the regulations in § 882.109(n), "Housing Quality Standards." The Department does not agree that more than two persons should be permitted to share a bedroom; this limitation applies to all HUD rental housing programs. With respect to the one to four ratio of sanitary facilities to occupants, the proposed standard is intended to make available an adequate number of facilities which can be used in privacy. Since only three comments indicated this requirement might pose a problem concerning available housing stock and one comment recommended that only two persons be allowed to share sanitary facilities, the Department has decided not to change this requirement.

With respect to developing controls preventing an overconcentration of Independent Group Residences in any one area, the Department agrees in principle with this recommendation, yet feels the program design encourages scattered site housing and implementation of this recommendation



could adversely restrict an individual's choice of housing. Similarly, the Department has not accepted the recommendation that all Independent Group Residences, regardless of whether the occupants are physically handicapped, be accessible to the handicapped. However, physical accessibility is a requirement when appropriate to the needs of the occupants. Implementation of this requirement for all Independent Group Residences would severely restrict the existing housing supply available and suitable to be used for this purpose by elderly, disabled and handicapped individuals who do not need any physical modifications to the unit.

With respect to comments concerning the need for a continual planned program of supportive services, the Independent Group Residences regulations were developed to allow eligible individuals who require a supervised group living environment to receive Section 8 assistance. Elderly, handicapped, and disabled individuals capable of living independently without supportive services are eligible for the Section 8 program and do participate in large numbers. The Department, however, believes it is essential that, if supportive services are required, high quality services appropriate to the needs of the Section 8 recipients be in fact provided. Therefore, the need for and provision of a planned program of continual services is the primary characteristic of Independent Group Residences, and special regulation provisions have been developed to allow these individuals to participate in the Section 8 program in a group situation and still be determined financially eligible on an individual basis.

#### LICENSING

Numerous comments were received with respect to the proposed requirement in § 882.109(n), "Housing Quality Standards," that Independent Group Residences be licensed by the State, or local agencies created by the State, to establish, maintain, and enforce appropriate standards. Comments expressed the concern that not all States have licensing agencies for group homes and it was recommended that Independent Group Residences be (1) licensed, or certified, as required by State law; (2) approved by the PHA or Service Agency at least on a temporary basis; (3) licensed, certified or otherwise approved by the State; or (4) licensed, regulated or operated by the State, or operated by a vendor under contract with the State. Another comment recommended that the Service Agency be licensed or authorized by licensing agencies.

The proposed regulations have been revised to require that Independent Group Residences be licensed, certi-

fied or otherwise approved in writing by the State. The Department believes it is essential that the type, frequency and the quality of services be monitored on a continual basis to ensure that residents of Independent Group Residences have a suitable living environment, and further feels that State approval is the most appropriate quality monitoring mechanism. It is anticipated that States will utilize standards similar to those which are required as a result of 45 CFR Parts 228 and 229 (Social Services Programs for Individuals and Families, Title XX and Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside) which implement Public Law 94-556 and which were published on January 31, 1978 by the Department of Health, Education and Welfare. Section 229.10 of these regulations requires States "to designate one or more State or local authorities to establish and enforce standards for non-medical, residential facilities where significant numbers of SSI recipients reside or are likely to reside."

#### SECURITY DEPOSIT

Several comments suggested that the maximum allowable security deposit be increased to one month's Contract Rent or the amount normally collected by the owner so that this aspect of the program would conform with private market practices. It was further suggested that, as the option of the family, the PHA be allowed to advance a portion of the security deposit to the owner and then collect this amount from the family in affordable installments. This procedure would reduce the PHA's involvement in determining the amount of reimbursement to an owner for unpaid rent or damages when the family vacates the unit since the full security deposit would have been paid.

Other comments recommended that (1) the \$50 minimum be increased to at least \$100; (2) the security deposit be a flat amount such as \$50 to simplify the bookkeeping requirements of PHA's and owners; (3) the security deposit be limited to the amount the owner currently charges; (4) the current security deposit provision not be revised at all; (5) a \$50 minimum is unfair since it applies only to families with the lowest incomes; (6) the proposed provision may be in conflict with State law; for example, in Connecticut the owner may not collect an amount in excess of twice the tenant's monthly rent; and (7) it is unfair to allow families leasing in-place to pay higher security deposits than those families moving to a new unit. In addition, several comments supported the adoption of the proposed security deposit provision without change.

Although the Department recognizes that allowing a security deposit in an amount up to one month's Contract Rent could encourage increased owner participation, this recommendation has not been adopted since it could have the effect of excluding very low-income families from participating in the program due to a lack of funds. Additionally, any PHA advance payment system would require PHAs to maintain a bookkeeping and collection system which is not now required and would be unacceptable to many PHAs.

The provision for a \$50 minimum security deposit for new leases has been retained in Section 882.112, "Security and Utility Deposits." However, this provision has been clarified to state that the owner does not have to collect a security deposit and that the maximum amount which can be collected from the family is the higher of \$50 or one month's Gross Family contribution provided that this amount does not exceed the maximum amount allowed by State or local law. The regulations do not prohibit the owner from collecting an amount less than \$50 or one month's Gross Family contribution if desired. However, owners may find that families do not take as good care of their units where they have no financial reason to do so. The recommendation that families leasing in-place not be excepted from the maximum security deposit provision has not been accepted since the partial refunding of security deposits has been found by PHAs to be a disincentive for owner participation; families voluntarily paid the requested amount previously; and this provision will not impose a financial hardship. In addition, the recommendation for a flat fee security deposit has not been adopted since the Gross Family contribution may exceed this amount and many owners would prefer to collect the higher amount so that families will have a greater interest to maintain the unit in good condition.

#### USE OF UNIT INSPECTION BOOKLET BY FAMILY AND OWNERS

One comment recommended that the family continue to be required to use the inspection booklet since this process helped eliminate unacceptable units and placed a desirable responsibility on the Certificate holder. Three comments supported the deletion of this requirement. Based on these comments the Department is adopting the change as published for comment in §§ 882.209(b)(4) and 882.210(a)(2). The family still must be advised of the Housing Quality Standards to be used in selecting a unit during the briefing session, and the PHA may continue to provide the family with an inspection form. This regulation change only de-

letes the requirement that the family and owner certify on a HUD form that the unit meets the physical standards of the program.

#### OVERCROWDED OR UNDER OCCUPIED UNITS

Several comments objected to the proposed revision to Section 882.213 requiring a family to relocate to a smaller unit, in accordance with the lease terms and with the assistance of the PHA, if the family size was reduced to the extent that they were in a unit larger than appropriate and the Gross Rent exceeds the Fair Market Rent for the unit size appropriate for the family size. It was pointed out that in an Independent Group Residence it could be anticipated that individuals would move to a more independent living environment or be hospitalized, and the remaining members of the group would then also have to move since they would under occupy the unit. Another comment expressed concern that the PHA could terminate assistance without due process if the family rejected a replacement unit without good reason.

The requirement that a family be required to move when a change in family composition results in the remaining members of the family occupying a unit larger than appropriate and the Gross Rent exceeds the Fair Market Rent for the unit size appropriate for the family has been retained since without this requirement a family would receive excessive rental subsidies. The regulations have been revised to clarify that the PHA shall issue such a family a new Certificate and that termination of assistance will occur only when this Certificate has expired and the PHA has assisted the family in locating a suitable replacement unit which the PHA judges to be acceptable.

With respect to Independent Group Residences, the Department feels that the changes made to § 882.102, "Definition of Independent Group Residence," § 882.106, "Contract Rents," and § 882.209, "Certificates of Family Participation," will prevent the noted problems since individuals will be issued separate Certificates and execute separate leases; there will be a separate HAP Contract for each individual; vacancies can be marketed to other individuals whether or not they are to receive Section 8 assistance; and the PHA will give a preference in issuing Certificates to possible replacement individuals. In addition, every change in composition of the members occupying an Independent Group Residence will not necessitate a move to a different sized unit. For example, if eight Section 8 recipients occupy a 4-bedroom unit, it would be permissible under the program's occupancy

standards for up to four individuals to vacate the unit and the other four individuals to remain in the unit occupying a private bedroom each. However, if five individuals were to vacate this 4-bedroom unit, the remaining three individuals may have to move to a smaller unit unless a suitable replacement tenant, who may or may not receive Section 8 assistance, can be located by the Service Agency or the PHA who will make the vacancy known to eligible Certificate holders. This move would be necessary if a replacement tenant does not move in and if (1) the Fair Market Rent for a 3-bedroom unit (the maximum size unit 3 persons are eligible for) is less than the Gross Rent currently being charged for the 4-bedroom unit; (2) the leases can be terminated in accordance with their terms; and (3) the remaining members of the group have found a suitable replacement unit with the assistance of the PHA. It is therefore anticipated that this provision of the regulations rarely will have an adverse effect on the residents of an Independent Group Residence.

Other changes to and comments on the proposed regulations are as follows:

1. Section 882.102, "Definition": (1) the illustrative description of supportive services is being deleted from the definition of Independent Group Residences and moved to § 882.109, "Housing Quality Standards"; (2) information with respect to the unit size, Certificates, Gross Family Contribution, Leases and Contracts is being deleted from the definition of Resident Assistant and moved to § 882.106, "Contract Rents"; and (3) definitions of Unit and Service Agreement are being added.

2. Section 882.110, "Types of Housing": (1) typographical errors are being corrected with respect to the term Independent Group Residences; (2) requirements concerning the physical and mental capabilities of residents of an Independent Group Residence are being moved to § 882.102; (3) facilities providing continual psychiatric services are being added as an example of ineligible types of housing; (4) the Fair Market Rent information for Congregate Housing and Independent Group Residences is being moved to § 882.106, "Contract Rents"; and (5) Congregate Housing is being deleted as an example of the type of housing which can be used as an Independent Group Residence since it is unlikely that 0-bedroom and 1-bedroom units, the typical bedroom sizes in Congregate Housing, could accommodate groups of two to twelve individuals, which is the size group eligible to live in an Independent Group Residence.

3. Several comments were received requesting clarification of program details contained in the sections of the

Section 8 Existing Housing Program regulations not published in the October 21, 1977 proposed rule, or in 24 CFR Part 812, "Definition of Family and Other Related Terms; Occupancy by Single Person" or 24 CFR Part 889, "Determination of Income for Eligibility and Gross Family Contribution." Persons interested in further information on 24 CFR Parts 812, 882, or 889 should contact either the PHA administering the program in their locality or the local HUD field office. However, since most of the questions were raised by organizations interested in developing an Independent Group Residence program, Section 8 program definitions of elderly, handicapped and disabled individuals as set forth to Part 812 are restated here for their information.

**"Elderly family. "Elderly Family"** means a family whose head or spouse or whose sole member is at least sixty-two years of age, or a Disabled Person as defined in this section or a Handicapped Person as defined in this section, and may include two or more elderly, Disabled or Handicapped Persons living together, or one or more such persons living with another person who is determined to be essential to his or her care and well being."

**"Handicapped person. "Handicapped Person"** means a person having a physical or mental impairment which (1) is expected to be of long-continued and indefinite duration, (2) substantially impedes his or her ability to live independently, and (3) is of such a nature that such ability could be improved by more suitable housing conditions."

**"Disabled person. "Disabled Person"** means a person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102(b)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 6001(7))." Section 223 of the Social Security Act defines disability as:

(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.



Section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 defines disability as: "... a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary (of Health, Education, and Welfare) to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual."

4. Section 882.105 has been modified to incorporate by reference the provisions of Part 889, Determination of Income for Eligibility and Gross Family Contribution. Part 889 establishes the definition of Annual Income and the formula for computation of Gross Family Contribution. Section 882.114 is being deleted since it is now redundant.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, Part 882 is revised to read:

#### Part 882—Section 8 Housing Assistance Payments Program—Existing Housing

##### Subpart A—Applicability, Scope and Basic Policies

- Sec.
- 882.101 Applicability and scope.
  - 882.102 Definitions.
  - 882.103 "Finders-Keepers" policy.
  - 882.104 Maximum total ACC commitment and ACC reserve account.
  - 882.105 Housing assistance payments to owners.
  - 882.106 Contract rents.
  - 882.107 Term of ACC, lease, and housing assistance payments contract.
  - 882.108 Rent adjustments.
  - 882.109 Housing quality standards.
  - 882.110 Types of housing.
  - 882.111 Equal opportunity requirements.
  - 882.112 Security and utility deposits.
  - 882.113 Establishments of income limit schedules; 30 percent occupancy by very low-income families.
  - 882.114 Reserved.
  - 882.115 Rent reduction incentive.
  - 882.116 Responsibilities of the PHA.
  - 882.117 Responsibilities of the owner.
  - 882.118 Responsibility of the family.
  - 882.119 Single ACC.
  - 882.120 Recently completed housing.

- Sec.
- 882.121 HUD administration of programs under this part.
  - 882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on September 1, 1978. (Insert date)

##### Subpart B—Project Development and Operation

- 882.201 Allocations of contract authority to field offices.
- 882.202 Determination of number and types of units to be assisted.
- 882.203 Invitations for existing housing program applications.
- 882.204 Submission of applications.
- 882.205 Processing of applications.
- 882.206 Annual contributions contract; schedule of leasing.
- 882.207 Public notice to lower-income families; waiting list.
- 882.208 Activities to encourage participation by owners and others.
- 882.209 Certificates of family participation.
- 882.210 Request for lease approval.
- 882.211 Maintenance, operation and inspections.
- 882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.
- 882.213 Overcrowded or under occupied units.
- 882.214 Adjustment of allowance for utilities and other services.
- 882.215 Eviction.
- 882.216 Inapplicability of low-rent public housing model lease and grievance procedures.
- 882.217 HUD review of contract compliance.
- 882.218 PHA reporting requirements. (Reserved).

##### APPENDICES

- Appendix I—Required lease provisions.  
Appendix II—Prohibited lease provisions.

AUTHORITY: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).

##### Subpart A—Applicability, Scope and Basic Policies

###### § 882.101 Applicability and scope.

(a) *General.* (1) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families leasing Existing Housing pursuant to the provisions of section 8 of the U.S. Housing Act of 1937 ("Act"). (2) For the purpose of this Part, "Existing Housing" means housing that is in Decent, Safe, and Sanitary condition except that it does not include housing: (i) Which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under 24 CFR, Part 800, 801, 880, or 881, or (ii) which is owned by the PHA administering the ACC under this Part, or (iii) which is subsidized under other provisions of the Act. Occupancy of housing which requires repairs in order to be made Decent, Safe,

and Sanitary may be assisted under this Part only after such repairs have been made. (See also § 882.210(d)).

(b) *Conversion of Section 23 Housing Projects.* (1) No HUD policy or procedure shall affect prior rights of an owner or tenant under a lease entered into under section 23 of the Act.

(2) PHAs are encouraged to develop plans for the orderly conversion of their section 23 housing to the section 8 program.

(3) Conversions should be accomplished so as to preclude the eviction of families receiving assistance under the section 23 program.

(4) Housing under ACCs implementing the HUD Experimental Housing Allowance Program shall not be subject to the provisions of this paragraph (b).

(5) With respect to section 23 housing other than new construction and substantial rehabilitation:

(i) Where section 23 housing is to be converted to section 8, HUD will, to the extent of available contract authority, approve one section 8 unit for each section 23 unit converted. Where section 23 units are not converted, the following provisions of this paragraph (b)(5) shall apply.

(ii) Any increases in rents and/or operating costs for occupied units must be funded by the elimination of units authorized under the section 23 ACC but not leased; section 23 ACC amounts shall not be increased, except under special circumstances as authorized by HUD.

(iii) No leases for additional units shall be entered into. Lease renewals and extensions may be entered into only with respect to occupied units and units which are to be reoccupied within 30 days, but the terms of such lease renewals may not extend beyond June 30, 1978, except under special circumstances as authorized by HUD, and then only until June 30, 1979.

(6) Section 23 Existing Housing projects for which ACCs were approved, but not executed, by December 31, 1974, shall be converted to section 8 (even if an ACC was executed subsequent to December 31, 1974), unless the PHA notifies HUD that it would prefer to retain the project under section 23. In the latter case, a section 23 ACC shall be executed, but the other provisions of this paragraph (b), shall be applicable, except that for initial leasing the provisions of paragraph (b)(5)(iii) shall not apply.

(7) Any completed (legally available for occupancy) Section 23 new construction or substantial rehabilitation project may be converted to Section 8 under contractual arrangements for such term and on such conditions as may be agreed to by all the parties and approved by HUD. The applicable Fair Market Rents shall be those for

Existing Housing under this part, except that for any unit which was completed or substantially rehabilitated no more than six years prior to the leasing thereof under this Part, the applicable rent shall be determined in accordance with Section 882.120(b).

###### § 882.102 Definitions.

*ACC Reserve Account.* The account established and maintained in accordance with § 882.104.

*Allowance for Utilities and Other Services ("Allowance").* An amount determined by the PHA as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

*Annual Contributions Contract ("ACC").* A written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the Act.

*Certificate of Family Participation ("Certificate").* A certificate issued by the PHA declaring a Family to be eligible for participation in this program and stating the terms and conditions for such participation.

*Congregate Housing.* See Section 882.109(m).

*Contract.* See definition of Housing Assistance Payments Contract.

*Contract Rent.* The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

*Decent, Safe, and Sanitary.* Housing is Decent, Safe, and Sanitary if the requirements of § 882.109 are met.

*Eligible Family ("Family").* A family (including those covered by the definition of "Family" in Part 812 of this Chapter) which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this Part.

*Existing Housing.* See § 882.101 (a)(2).

*Fair Market Rent.* The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, Decent, Safe, and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units of varying sizes (number of bedrooms) and types (e.g. elevator, non-elevator).

*Gross Family Contribution.* The portion of the Gross Rent payable by an Eligible Family (i.e., the difference between the amount of the Housing Assistance Payment payable on behalf of

the Family and the Gross Rent), before deduction of Rent Credit, where applicable.

*Gross Rent.* The Contract Rent plus any Allowance for Utilities and Other Services.

*HCD Act.* The Housing and Community Development Act of 1974.

*Housing Assistance Payments Contract ("Contract").* A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an Eligible Family.

*Housing Assistance Payment on Behalf of Eligible Family.* The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD. (See § 882.114).

*Housing Assistance Plan.*

(1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Grant Program as part of the block grant application, in accordance with the requirements of § 570.303(c) of the Community Development Block Grant regulations (24 CFR 570), and approved by HUD;

(2) A Housing Assistance Plan meeting the requirements of § 570.303(c), submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

*HUD.* The Department of Housing and Urban Development or its designee.

*Income.* Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

*Independent Group Residence.* A dwelling unit for the exclusive residential use of two to twelve elderly, handicapped or disabled individuals (excluding live-in Resident Assistant(s) if any) who are not capable of living completely independently and require a planned program of continual supportive services. (See Section 882.109(n)(6).) Individuals residing in an Independent Group Residence and receiving Section 8 assistance shall not require continual medical or nursing care and shall be ambulatory or not confined to a bed continuously and capable of taking appropriate actions for their own safety under emergency conditions.

*Lease.* A written agreement between an Owner and an Eligible Family for the leasing of an Existing Housing unit in accordance with the Contract, which agreement is in compliance with the provisions of this Part.

*Lower-Income Family.* A Family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger Families,

except that HUD may establish income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

*Owner.* Any person or entity, including a cooperative, having the legal right to lease or sublease Existing Housing.

*Public Housing Agency ("PHA").* Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

*Recently Completed Housing.* See § 882.120.

*Rent Credit.* See § 882.115.

*Resident Assistant.* A person who lives in an Independent Group Residence and provides on a daily basis some or all of the necessary support services to elderly, handicapped and disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or well being. A Resident Assistant shall not be related by blood, marriage or operation of law to the individuals receiving Section 8 housing assistance nor contribute a portion of his or her income or resources towards the expenses of these individuals. (See Sections 882.109(n) and 882.106(c).)

*Secretary.* The Secretary of Housing and Urban Development.

*Service Agency.* A public or private non-profit organization which is recognized by the State as qualified to determine the supportive service needs of individuals who will reside in Independent Group Residences. The service agency may perform outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance, provide all or a portion of the supportive services and may identify and coordinate appropriate local, public or private resources to furnish these services. The Service Agency may own or sublease an Independent Group Residence.

*Service Agreement.* A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See Sections 882.109(n)(6) and 882.210(f)(2).)

*Unit.* Residential space for the private use of a Family (including individuals who comprise a Family in accordance with 24 CFR 812), such as an



apartment, house, or Independent Group Residence, which contains a living room, kitchen area, bathroom(s) and bedroom(s). However, a congregate housing unit need not contain a kitchen area since central dining facilities are available within the building or housing complex, and a 0-bedroom unit may have a combined living/bedroom area. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from 0-bedroom to 6-bedrooms.

**Very Low-Income Family.** A Family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

#### § 882.103 "Finders-Keepers" Policy.

(a) A holder of a Certificate of Family Participation shall be responsible for finding an Existing Housing unit suitable to the holder's needs and desires in any area where the PHA determines that it is not legally barred from entering into Contracts. A holder of a Certificate may select a dwelling unit which the holder already occupies if the unit qualifies as Existing Housing. Upon request, the PHA shall provide assistance in finding units for those Families who, because of age, handicap, or other reasons, are unable to locate approvable units and shall provide such assistance where the Family alleges that illegal discrimination is preventing it from finding a suitable unit. Any such assistance shall be in accordance with the PHAs approved equal opportunity housing plan (see § 882.204(b)(1)).

(b) Neither in the provision of assistance to any Family in finding units nor by any other action shall the PHA directly or indirectly reduce the Family's opportunity to choose among the available units in the housing market. The provisions of this section shall apply to all holders of Certificates including those who are residing in or may wish to reside in Congregate Housing or Independent Group Residences.

(c) PHAs are encouraged to promote greater choice of housing opportunities by: (1) seeking participation of owners in any area in which the PHA has determined that it is not legally barred from entering into Contracts, (2) advising Families of their opportunity to lease housing in all such areas, (3) cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another and (4) developing administrative arrangements with other PHAs in order to permit Certificate Holders to seek housing in the broadest possible area. In any geo-

graphic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units.

#### § 882.104 Maximum total ACC commitments and ACC reserve account.

(a) **Maximum Total ACC Commitment.** The maximum total annual contribution that may be contracted for in the ACC for Existing Housing shall not exceed the total for all the units of the Fair Market Rents or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The fee for the regular costs of PHA administration and the HUD-approved preliminary costs shall be payable out of this total. With the approval of the Assistant Secretary for Housing Production and Mortgage Credit, an amount for the fee for the regular costs of PHA administration may be added to this total in cases where the need for the additional funds is evident from the estimates of required annual contributions submitted on the prescribed forms pursuant to § 882.204(b)(2).

(b) **ACC Reserve Account.** An ACC reserve account will be established and maintained, in an amount determined by the Secretary, consistent with his responsibilities under section 8(c)(6) of the Act. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

- (1) Housing assistance payments,
- (2) the amount of the fee for regular PHA costs of administration; and
- (3) Other costs specifically authorized or approved by the Secretary.

(c) In addition, the ACC will provide that HUD will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to assure availability of funds to cover increases in housing assistance payments on a timely basis as a result of increases in Contract Rents or decreases in Family Incomes.

#### § 882.105 Housing assistance payments to owners.

(a) **General.** Housing assistance payments shall be paid to an Owner in accordance with his Contract for the dwelling unit under lease by an Eligible Family. These housing assistance payments will cover the difference between the Contract Rent and the portion of said rent payable by the Family as determined in accordance with Part 889 and § 882.115. No section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives are considered rental housing rather than

owner-occupied housing for this purpose.

(b) **Vacated Units.** (1) If an Eligible Family vacates its unit in violation of the provisions of the Lease or tenancy agreement, the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days or the expiration or other termination of the Lease or tenancy agreement, whichever comes first; provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct; and provided further, that if the vacancy is the result of action by the Owner, the Owner shall not receive any payment under this paragraph if his action was in violation of the Lease or the Contract or any applicable law or if the Owner failed to comply with § 882.215.

(2) The Owner shall not be entitled to any payment under this paragraph (b) unless he: (i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, (ii) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on his waiting list, if any; requesting the PHA and other appropriate sources to refer eligible applicants; and advertising the availability of the unit and (iii) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(3) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this paragraph (b) to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocations pursuant to Title I of the HCD Act or payments under § 882.112).

#### § 882.106 Contract rents.

(a) **Fair Market Rent Limitation.**

(1) The Gross Rent for any Existing Housing unit approved pursuant to § 882.210(b) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

(2) For up to 20 percent of the units authorized by an ACC, the PHA may approve Gross Rents on a unit-by-unit basis which exceed the applicable Fair Market Rents by up to 10 percent. The PHA may, in addition, exercise such authority with respect to more than 20 percent of the units authorized by an ACC if HUD approves such extension of the PHAs authority. In considering whether to grant such approval,

HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum Gross Rents for all units of a given size or type (elevator/non-elevator) of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that (i) special circumstances apply to units of a given size or type limited to a specified neighborhood, (ii) by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and (iii) the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. On the basis of a showing by the PHA that (iv) the leasing of a certain unit is necessary to meet the unique needs of a particular Family, (v) the reasonable Gross Rent for the unit is as high as 20 percent above the applicable Fair Market Rent, and (vi) the unit cannot be rented for less, HUD may authorize the PHA to approve a Gross Rent for that unit up to 20 percent above the applicable Fair Market Rent. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section except for the last sentence thereof.

(b) **Rent Reasonableness Limitation.** (1) The PHA shall certify for each unit for which it approves a lease that the Contract Rent for such unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance service of such unit, and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) For a rent controlled unit, comparable units shall be those which are rent controlled; for a unit which is not subject to rent control, comparable units shall be those which are not rent controlled.

(3) The PHA shall maintain for three years all certifications and relevant documentation under this paragraph (b) for inspection by HUD.

(c) **Congregate Housing and Independent Group Residences.** (1) The Fair Market Rent for each congregate housing unit shall be the same as for 0-bedroom units, except that, if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2)(i) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(ii) The PHA shall issue a 0-bedroom Certificate of Family Participation for each eligible individual who will reside in an Independent Group Residence and a separate Lease and Contract shall be executed. A Resident Assistant(s) who resides in the unit may be considered a Family member for purposes of determining the appropriate unit size. However, the Resident Assistant's income shall be disregarded for purposes of determining the Gross Family Contribution and the Family's income for eligibility for housing assistance. Notwithstanding the requirements specified above, if an eligible individual wishes to move, the PHA may then issue that individual a 1-bedroom Certificate, if appropriate, in accordance with § 882.209(a)(2).

(3) For purposes of determining the housing assistance payment for each individual participating in the Section 8 Existing Program, the PHA shall allocate the Gross Rent, which is subject to paragraphs (a) and (b) of this section, among the total number of occupants in the Independent Group Residence in an equitable manner which ensures that the Gross Rents of occupants (other than the resident Assistant(s), if any, occupying no more than 1-bedroom) not receiving Section 8 assistance are not subsidized.

To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other than the Resident Assistant(s), if any, who will occupy no more than 1-bedroom. For example, if three Section 8 recipients and a Resident Assistant reside in a 4-bedroom unit, the housing assistance payment for each of the Section 8 recipients would be based on  $\frac{1}{4}$  of the Gross Rent. Likewise, if two Section 8 recipients, a Resident Assistant and a

person not receiving Section 8 assistance reside in a 4-bedroom unit, the housing assistance payments for each of the Section 8 recipients would be based on  $\frac{1}{4}$  of the Gross Rent; the person not receiving Section 8 assistance would pay  $\frac{1}{4}$  of the Gross Rent. However, if a Section 8 recipient, a person not receiving Section 8 assistance, and two Resident Assistants each occupy a bedroom in a 4-bedroom unit, the housing assistance payment for the Section 8 recipient would be based on  $\frac{1}{4}$  of the Gross Rent and one of the Resident Assistants would be considered a person not receiving Section 8 assistance since this section prohibits Section 8 assistance being contributed toward more than 1-bedroom for the housing costs of the Resident Assistant(s). In all of these examples the Fair Market Rent for the Independent Group Residence would be that of a 4-bedroom unit.

(4) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining and sanitary facilities and the provision of special amenities or maintenance and/or management services. The Contract Rent shall not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or serving food.

#### § 882.107 Term of ACC, lease, and housing assistance payments contract.

(a) **Term of ACC.** The term of the ACC shall be for five years.

(b) **Term of Lease and of Housing Assistance Payments Contract.** The Lease shall be for not less than one year nor more than three years but may contain a provision permitting termination upon 30 days advance written notice by either party. The term of the Lease shall be as agreed by the Family and the Owner, subject to the limitations of the preceding sentence. The term of the Contract shall be for the term of the Lease; Provided, that if a Family continues in occupancy after the expiration of the term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the PHA and incorporated in the Contract where appropriate), the Contract shall continue in effect for the duration of such tenancy subject to the limitation in the next sentence. Any renewal of the Contract and Lease term, and any continuation of tenancy beyond the term, shall in no case extend beyond the term of the ACC pertaining to the Contract and the Lease.

#### § 882.108 Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this section upon request to the PHA by the Owner, provided that the



unit is in Decent, Safe, and Sanitary condition and that the Owner is otherwise in compliance with the terms of the lease. Subject to the foregoing and the provisions of Section 882.106, including the Fair Market Rent and rent reasonableness limitations of that section, adjustments to Contract Rents shall be as follows:

(1) *Annual Adjustment.* For Contracts entered into after September, 1978, an adjustment as of any anniversary date of the lease not to exceed the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the FEDERAL REGISTER, provided that the Owner has the legal right to terminate the tenancy as of such anniversary date. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract. For Contracts entered into prior to September, 1978, annual adjustments may be based on the percentage of change in the applicable published Existing Housing Fair Market Rents (with an appropriate reduction in the adjustment where utilities are paid directly by the Family), provided that the Owner has the legal right to terminate tenancy as of such anniversary date.

(2) *Special Adjustments.* A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph (a)(1) of this section. The Owner shall submit financial statements to the PHA which clearly support the increase. Such adjustment shall be effective as of the date when the Owner has the legal right to terminate the tenancy, which need not be the anniversary date of the Contract.

(b) *Overall Limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in Sec. 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2)).

#### § 882.109 Housing quality standards.

Housing used in this program shall meet the Performance Requirements

set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities.*—(1) *Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal.*—(1) *Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability Criteria.* The unit shall contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and Security.*—(1) *Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment.*—(1) *Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling

to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity.*—(1) *Performance Requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials.*—(1) *Performance Requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability Criteria.* Ceilings, walls, and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. In the case of a mobile home, the home shall be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding.

(g) *Interior Air Quality.*—(1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one operable window or other adequate exhaust ventilation.

(h) *Water Supply.*—(1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint.*—(1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35; issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the Owner shall provide a certification that the dwelling is in accordance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access.*—(1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood.*—(1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition.*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The units and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing—Performance Requirement.* The foregoing standards shall apply except for paragraph (b) of this section and the re-

quirement in paragraph (c)(2) of this section for a kitchen area. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The sanitary facilities described in § 882.109(a) shall be contained within the unit.

(3) The central dining facility and central kitchen shall be located within the building or housing complex and be accessible to the occupants of the congregate units, and shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner by a food service or persons other than the occupants and shall be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(n) *Independent Group Residence—Performance Requirement.* The foregoing standards shall apply except for paragraphs (a), (b), (c), (f), (k), and (m) of this section. In addition, the following standards shall apply: (1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers (police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(4) The unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment. Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment shall not contain architectural barriers which impede access or use, and handrails and ramps shall be provided as appropriate.

(5) The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibrations or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards. The unit shall be located in a residen-



tial setting and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public or available private transportation to medical and other appropriate commercial and community service facilities.

(6) **Supportive Services.** (i) A planned program of adequate supportive services appropriate to the needs of the occupants shall be provided on a continual basis by a qualified Resident Assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide such services on a continual, planned basis. Supportive services which are provided within the unit may include the following types of services: counseling; social services which promote physical activity, intellectual stimulation and/or social motivation; training or assistance with activities of daily living including housekeeping, dressing, personal hygiene and/or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit shall not include the provision of continual nursing, medical or psychiatric care.

(ii) The provision and quality of the planned program of supportive services, including the minimal qualifications, quantity and working hours of the Resident Assistant(s) living in the unit or other person(s) providing continual supportive services, shall be initially determined by the Service Agency in accordance with the standards established by the State. Compliance with these standards by the Service Agency shall be regularly monitored throughout the term of the Contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services, etc.), or a local authority (other than the Service Agency providing services) designated by the State to establish, maintain and enforce such standards.

(iii) A written Service Agreement(s), approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease Approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall

be approved by the State. (See § 882.210(f)(2).)

(7) **State Approval.** Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State.

To insure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement(s) (or Lease, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.210(f)(2).)

#### § 882.110 Types of housing.

(a) Any type of Existing Housing meeting the housing quality standards may be utilized under this part, except nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services. Examples of Existing Housing which may be utilized include, but are not limited to, privately owned apartments, houses and congregate housing units; existing FHA insured. Section 202 direct loan. Farmers Home Administration (FmHA) insured or direct loan, or VA guaranteed properties; properties held by the Secretary, or properties sold by the Secretary on which the Secretary has taken back a purchase money mortgage. Eligible types of Independent Group Residences include, but are not limited to, self-contained apartments and houses; *Provided*, They meet the requirements of § 882.109(n).

(b) Congregate housing may be utilized for eligible elderly, handicapped, disabled or displaced families or individuals. Independent Group Residences shall be utilized for eligible elderly, handicapped or disabled Families or individuals which require a planned program of continual supportive services.

(c) In any section 221(d)(3) below market interest rate (BMIR) or market interest rate (MIR), section 202, section 236 (insured or non-insured), FmHA section 515 interest credit project:

(1) units receiving assistance under the section 23 or rent supplement programs may continue to receive such assistance or, upon conversion of the section 23 units to section 8, the occupants may receive assistance under section 8, and (2) the occupants of units not receiving such assistance may receive section 8 assistance, provided that the total number of units in the project covered by Housing Assist-

ance Payments Contracts under section 8 or receiving section 23 rental assistance, rent supplement assistance, section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement) does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for the purpose of relieving hardship of a particular Family or Families only with the approval of the Regional Administrator. Prior to granting such an approval, the Regional Administrator will review the request to determine whether assistance under Part 886, Subpart A, "Additional Assistance Program for Projects with HUD-insured and HUD-held Mortgages" is more appropriate and whether such assistance can be scheduled.

(d) For any section 221(d)(3) BMIR, section 202, section 236 (insured or noninsured), or FmHA section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent payable by the Eligible Family under section 23 or section 8 is less than the subsidized rent (which subsidy shall not be reduced on account of any section 23 or section 8 assistance).

(e) In no event may any occupant receive the benefit of more than one of the following: rent supplement, section 23 housing assistance, section 8 housing assistance, or section 236 "deep subsidy" rental assistance payments.

#### § 882.111 Equal opportunity requirements.

Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and all rules, regulations, and requirements issued pursuant thereto. The PHA shall comply with section 3 of the Housing and Urban Development Act of 1968 and all rules, regulations and requirements issued pursuant thereto.

#### § 882.112 Security and utility deposits.

(a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits

from its resources and/or other public or private sources.

(b) If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from the PHA for an amount not to exceed the lesser of: (1) the amount owed the Owner, (2) one month's Contract Rent, minus the amount of the security deposit, or (3) one month's Contract Rent, minus the greater of one month's Gross Family Contribution at the time of Lease execution or \$50 (or the maximum amount allowable under State or local law). Any reimbursement under this section shall be applied first toward any unpaid Family Contribution due under the Lease. No reimbursement shall be claimed for unpaid rent for the period after termination of the Lease.

#### § 882.113 Establishment of income limit schedules; 30 percent occupancy by very low-income families.

(a) HUD will establish schedules of income limits for determining whether families qualify as Lower-Income Families and Very Low-Income Families.

(b) Each PHA shall administer its Existing Housing program under this Part, including the issuance of a sufficient number of Certificates to Very Low-Income Families, so that at least 30 percent of the Families for whom Leases are approved by the PHA are Very Low-Income Families. However, in connection with periodic reexamination of Family Income, the PHA shall ascertain whether at least 30 percent of all the assisted Families are Very Low-Income Families, and where the percentage is lower than 30 percent, the PHA shall thereafter use its best efforts in connection with subsequent issuance of Certificates of Family Participation to achieve at least a 30 percent level.

#### § 882.114 [Reserved].

#### § 882.115 Rent reduction incentive.

(a) If a Family selects a unit for which the Owner's proposed Contract Rent plus any applicable Allowance is below the applicable Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3), the Family will be given credit by a reduction (Rent Credit) in its required monthly Gross Family Contribution. The applicable Fair Market Rent or such higher rent, as approved, is that in effect at the time of Lease approval for the Family size. Thereafter the applicable rent is the rent appropriate to the Family size at the time of reexamination of Family income and composition. The purpose of this provision is to provide an incentive to Families to find the most economical Decent, Safe, and Sanitary housing suitable to their needs and approvable under this Part.

(b) The amount of the monthly Rent Credit shall be the dollar amount equal to that percentage of the Gross Family Contribution which the Rent Savings is of the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The Rent Savings is the amount by which the Fair Market Rent or such higher rent, as approved, exceeds the sum of the approved Contract Rent and any applicable Allowance.

(c) The Rent Credit shall not be payable if the Family selects a unit receiving the benefit of Federal, State, or local subsidies. However, HUD may, on its own initiative or at the request of a PHA, authorize applicability of the Rent Credit to subsidized units if HUD determines that it is in the public interest to do so because the project in which the units are located is experiencing a large number of vacancies or high turnover. The PHA shall make known to Certificate holders the fact that the approved units are not subject to the prohibition otherwise applicable with respect to subsidized units.

#### § 882.116 Responsibilities of the PHA.

In administering its ACC with HUD, the PHA (subject to review or audit by HUD) shall be responsible for the following:

(a) Publication and dissemination of information concerning the availability and nature of housing assistance for Lower-Income Families;

(b) Public invitation of Owners to make dwelling units available for leasing by Eligible Families and development of working relationships and contracts with landlords and appropriate associations and groups;

(c) Receipt and review of applications for Certificates of Family Participation, verification of family

income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this Part;

(d) Issuance of Certificates of Family Participation to Eligible Families;

(e) Notification of families determined to be ineligible;

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, landlord and tenant responsibilities, and basic program rules including the operation of the Rent Credit;

(g) Determination of amounts of Gross Family Contributions and Rent Credits, if any;

(h) Determination of amounts of housing assistance payments;

(i) Explanation of program procedures to Owners including those who have been approached by Certificate holders;

(j) Review of and action on Requests for Lease Approval, including monitoring to assure that the limitations on use of Section 8 housing assistance in subsidized projects specified in § 882.110(c) are observed;

(k) Making of housing assistance payments;

(l) Provision of housing information to assisted Families and referral of such Families to appropriate social service agencies upon request;

(m) Reexaminations of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Gross Family Contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(n) Redeterminations of amount of rent payable by the Family and amount of housing assistance payment in accordance with HUD-established schedules and criteria as a result of an adjustment by the PHA of any applicable Allowance for Utilities and Other Services;

(o) Inspections prior to leasing and inspections at least annually to determine that the units are maintained in Decent, Safe, and Sanitary condition, and notifications to Owners and Families of PHA determinations;

(p) Authorization of evictions (see § 882.215);

(q) Administration and enforcement of Contracts with Owners and taking of appropriate actions in case of non-compliance or default; and

(r) Compliance by the PHA with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration.



**§ 882.117 Responsibilities of the owner.**

(a) The Owner shall be responsible (subject to review or audit by the PHA or HUD) for performing all of his obligations under the Contract and Lease. The Owner's responsibilities shall include but not be limited to:

- (1) Performance of all management and renting functions;
- (2) Payment for utilities and services (unless paid directly by the Family);
- (3) Performance of all ordinary and extraordinary maintenance;
- (4) Collection of Family rents;
- (5) Preparation and furnishing of information required under the Contract; and

(6) Compliance by the Owner with equal opportunity requirements.

(b) Any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section, provided that such contract shall not shift any of the Owner's responsibilities or obligations, and provided further that no such contract may be entered into with an entity which is responsible for administration of the Housing Assistance Payments Contract. If the Owner and a PHA wish to enter into a management contract, they may do so provided that the Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA or by HUD or an entity acting on behalf of HUD. If no other PHA is able and willing to administer the Contract, HUD will do so or will designate an entity to do so on its behalf, pursuant to § 882.121(b).

**§ 882.118 Responsibility of the family.**

A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under the Certificate of Family Participation issued to it by the PHA and under the Lease with the Owner.

**§ 882.119 Single ACC.**

(a) All of the Existing Housing units administered by a PHA under the Housing Assistance Payments Program (except where the PHA's area of operation is within the jurisdiction of more than one field office) shall be covered by and administered under a single ACC Part I.

(b) In the event that a PHA applies for additional Existing Housing units, the units, if approved, shall be incorporated into a revised Part I of the ACC which shall cover the PHA's entire Housing Assistance Payments Program for Existing Housing. The revised Part I shall be for a new term for the aggregate number of units starting with the date of execution of the revised ACC Part I. When the PHA applies for additional units, it shall specify the number of years for which the aggregate number of units is needed

and shall demonstrate such need. On the basis of such showing, HUD shall determine whether the new term for the aggregate number of units shall be five years or such lesser number of years as HUD may find to be justified. The maximum annual contribution of the revised program shall be the sum of (1) an appropriate amount of annual contribution for the number of units prior to the revision, taking into account the existing ACC Reserve Account, plus (2) the amount approved for the additional units which shall be computed pursuant to § 882.104(a).

**§ 882.120 Recently completed housing.**

(a) HUD may invite and approve applications by PHA's for use of Existing Housing units at the higher Fair Market Rents authorized by paragraph (b) of this section, where construction or substantial rehabilitation of such units was completed (legally available for occupancy) no more than six years prior to the date of the leasing of the unit ("Recently Completed Housing") in areas which meet the following characteristics:

(1) The housing needs of Lower-Income Families in the area cannot be addressed by use of Existing Housing within the rent limitations authorized under Section 882.106 because:

(i) The rental vacancy rate for the municipality, county, or similar locality is inadequate. (A vacancy rate of six percent will be considered adequate except in localities experiencing very little growth, in which a vacancy rate lower than six percent may be deemed adequate); or

(ii) The housing needs of one or more particular household types (e.g., elderly/handicapped family, large family) cannot be addressed utilizing the supply of Existing Housing at or below the rents authorized under § 882.106 because of lack of availability of appropriate units. In such case, the Recently Completed Housing to be authorized will be limited to the needs of the specialized household types.

(2) The housing needs of Lower-Income Families can be addressed by use of Recently Completed Housing, because:

(i) The rental vacancy rate for the municipality, county, or similar locality among Recently Completed Housing units is adequate as defined in paragraph (a)(1)(i) of this section; or

(ii) Units of Recently Completed Housing are available which will meet the housing needs of one or more household types which cannot be met utilizing the supply of housing within the rent limitations of the program.

(b) Rents no more than 10 percent above the Fair Market Rents for Recently Completed Housing (75 percent of the Section 8 New Construction Fair Market Rents) may be approved

by the PHA pursuant to § 882.106(a)(2) or by HUD pursuant to § 882.106(a)(3) or (4). However, rents more than 10 percent above the applicable Fair Market Rent shall not be approved for Recently Completed Housing.

(c) Applications shall be submitted by the appropriate PHA or PHA's for an Existing Housing program utilizing Recently Completed Housing which may but need not be included as a part of an application for other housing assistance under this Part.

(d) The approval of such an application shall authorize the PHA to (1) publicize the availability of such Fair Market Rents for the specified number of units of Recently Completed Housing, (2) invite Owners of such housing to submit evidence that their units qualify as Recently Completed Housing, and (3) inform holders of Certificates of Family Participation of the locations of such Housing and of the applicable Fair Market Rents. Annual and special adjustments in Contract Rents for Recently Completed Housing shall be made in accordance with Section 882.108 and are also subject to the Fair Market Rent and rent reasonableness limitations.

(e) All provisions of this Part, not specifically modified by this section, shall be applicable to housing under this section.

**§ 882.121 HUD administration of programs under this part.**

(a) If, after sending the invitations required by Sec. 882.203, no application is received by HUD by the deadline date for operation of an Existing Housing program in the area, or if the only applications received are not approvable, the HUD field office shall make such further inquiry, including advice and offer of assistance, as in its judgment may result in the submission of an approvable application by a PHA.

(b) If, on the basis of such further inquiry and all other pertinent information available to the HUD field office, HUD determines that there is no PHA organized or that there is no PHA able and willing to implement the provisions of this Part for an area, HUD (or an entity acting on behalf of HUD) may, pursuant to section 8(b)(1) of the Act, enter into Contracts with Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such area.

(c)(1) If one or more Owners wish to contract for the management of their housing by the PHA which is administering the ACC for that area under this Part, and the PHA is willing to do this, or if the PHA owns housing which is suitable for utilization under this Part, HUD shall ascertain whether there is another PHA able and willing to enter into an ACC and adminis-

ter the program under this Part with respect to housing which is managed or owned by the first PHA. If so, such an ACC may be entered into, and the housing covered thereby shall be excluded from the ACC with the first PHA.

(2) If on the basis of inquiry and all other pertinent information available to the HUD field office, HUD determines there is no PHA able and willing to administer an ACC with respect to housing managed or owned by the first PHA, HUD (or another entity acting on behalf of HUD), may, pursuant to section 8(b)(1) of the Act, enter into Contracts with the Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such housing.

**§ 882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on September 1, 1978.**

The Regulations shall be applicable to Certificates outstanding on September 1, 1978, and Requests for Lease Approval pending on September 1, 1978, to the maximum extent and in the manner that the PHA deems feasible.

**Subpart B—Program Development and Operation****§ 882.201 Allocations of contract authority to field offices.**

HUD field offices will be allocated contract authority for the Section 8 Housing Assistance Payments Program for metropolitan areas and for non-metropolitan areas in conformance with section 213(d) of the HCD Act and regulations pursuant thereto (24 CFR 891).

**§ 882.202 Determination of number and types of units to be assisted.**

Each field office shall, after considering the contents of any Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, including any applicable State or areawide housing allocation plan, determine the number and types of units to be made available for new construction, substantial rehabilitation and existing housing in the geographic areas established for the purpose of allocating funds (herein called "allocation areas").

**§ 882.203 Invitations for existing housing program applications.**

(a) *Sending of Invitation.* The HUD field office shall initiate implementation of its program with respect to Existing Housing by sending invitations for Existing Housing Program applications, for the area(s) for which applications are desired in accordance with

a schedule established by the field office. The schedule may be modified at such time as circumstances require. The invitation shall be sent on the same day to appropriate PHAs, to the Governor, and to the chief executive officers of the appropriate counties, municipalities, or other governmental entities or public bodies which are authorized to engage in or assist in the development or operation of low-income housing. In addition, HUD shall send promptly information concerning its issuance of invitations to trade journals, news media (including minority media), minority organizations involved in housing and community development, and fair housing groups. Additional copies of the invitation shall be available in the HUD field office.

(b) *Contents of Invitation.* The invitation shall indicate: (1) that applications may be submitted by public housing agencies (i.e., any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing), (2) the maximum number of units, (3) the geographic area, (4) the deadline for submission of applications (which shall be at least 30 but not more than 60 calendar days after the date invitations are sent as provided in the third sentence of paragraph (a) of this section), (5) the fact that application and other forms and copies of Program regulations may be obtained from the field office, (6) the fact that if no application is received by the deadline date, HUD may determine to carry out the Existing Housing program directly, pursuant to section 8(b)(1) of the Act, and (7) such other basic information as the field office may specify.

**§ 882.204 Submission of Application.**

The application for an Existing Housing Project shall be submitted by a PHA to the HUD field office. Advice and assistance in the preparation of the application are available from the HUD field office.

(a) The application shall be in the form and in accordance with the instructions prescribed by HUD and shall:

(1) Indicate the types of Existing Housing (e.g., elevator, non-elevator) likely to be utilized in the proposed project and whether authorization for the use of Recently Completed Housing is desired (see Sec. 882.120).

(2) Indicate the total number of units expected to be utilized by unit size (i.e., one bedroom units, two bedroom units, etc.) and the approximate number of units for occupancy by elderly, handicapped, or disabled.

(3) Demonstrate that the project requested in paragraph (a)(2) of this section is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of Lower-Income Families, or in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped, disabled, large Families and those displaced) residing in or expected to reside in the community.

(4) Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to participate in the section 8 Existing Housing program for the area in which the Existing Housing program is to be carried out and include in such demonstration (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel.

(5) Include a statement that the housing quality standards to be used in the operation of the program will be as set forth in § 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

(6) Include a proposed schedule specifying the number of units to be leased.

(b) For each application, or in a combined submission covering several applications, the PHA shall submit the following items with the application(s) or after application approval but no later than with the PHA-executed ACC.

(1) An equal opportunity housing plan.

(i) The plan shall describe the PHA's policies and procedures for:

(A) Fulfilling the requirements of § 882.207(a) and § 882.208.

(B) Achieving the participation of owners of units of suitable price and quality in areas outside low income and minority concentrations and outside the local jurisdiction where possible.

(C) Selecting among eligible applicants those to receive Certificates of Family Participation, including any provisions establishing local requirements for eligibility or preferences for selection in accordance with § 882.209(a)(3).

(D) Providing assistance in finding a unit to Certificate holders who allege that illegal discrimination is preventing them from finding a suitable unit.

(ii) Relative to accomplishing the task set forth in paragraphs (b)(1)(i) (B) and (D) of this section, the PHA should consider the possibility of sub-



contracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in the process of finding housing in the locality.

(iii) The plan shall also include signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of Civil Rights Act of 1968; Executive Order 11063; and if the housing assistance may be used within an area of a Housing Assistance Plan, a certification that the applicant will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the Housing Assistance Plan.

(2) Estimates of financial requirements for preliminary costs, administrative costs and housing assistance payments on the prescribed forms.

(3) An administrative plan. (i) The plan shall include: a statement of the PHA's overall approach and objectives in administering the Existing Housing program; a description of the procedures to be used in carrying out each function; and a statement of the number of employees proposed for the program, by position and functions to be performed.

(ii) The following functions should be addressed: outreach to eligible families; contact with Owners; completion of applications and determinations of family eligibility; selection of families; computation of Gross Family Contributions; briefing of Families and issuance of Certificates; use of housing quality standards and inspections; lease approval and Contract execution; payments to Owners; recertification of Incomes; provision of housing information and services to recipient Families; review and adjustment, as necessary, of Allowances for Utilities and Other Services; reinspection of units under Contracts; processing requests for rent adjustments by Owners; terminations; establishment of complaint and appeal procedures; monitoring program performance.

(4) A proposed schedule of Allowances for Utilities and Other Services with a justification of the amounts proposed.

#### § 882.205 Processing of applications.

(a) *Initial Screening of Applications.* Promptly after receipt of an application, the HUD field office will check whether or not the application is complete. If an application is incomplete, the PHA will be so notified and will be given until the deadline date or, if necessary, a reasonable time thereafter within which to complete the application.

(b) Pursuant to section 213 of the HCD Act and regulations issued pursuant thereto, no later than 10 working days after receipt of an application, the field office shall send a notification to the chief executive officers of units of general local government of those localities which are identified in the Application for Existing Housing as primary areas from which families to be assisted will be drawn. This notification shall:

(1) In all cases, advise that the field office has received and is considering an application for housing assistance to be provided to families from that jurisdiction, identify the housing program (existing housing), state the number of units by bedroom size and the number of units by household type (elderly and/or handicapped, family, large family), and identify the areas from which families to be assisted will be drawn.

(2) For applications for areas with Housing Assistance Plans:

(i) Advise the local government that it may submit, no later than 30 days after the date of the notification letter, objections to the approval of the application on the ground that the application is inconsistent with the applicable Housing Assistance Plan.

(ii) Invite submission of any other comments on behalf of the local government which are relevant to a determination by the field office director concerning approval of the application for housing assistance.

(3) For applications for areas without Housing Assistance Plans, invite the local government to submit, no later than 30 days after the date of the notification letter, comments which are relevant to a determination by the field office concerning the application for housing assistance.

(c) *Evaluation of Applications.* HUD may begin its evaluation immediately upon receipt of the application, but no final decision of approval or disapproval of the application may be made until after the deadline for receipt of applications or the end of the opportunity for response referred to in paragraph (b) of this section, whichever is later. Each application will be evaluated by HUD on the basis of all pertinent factors under this Part, including comments, if any, received during the comment period from the unit of general local government. In selecting among approvable applications, HUD will give preference as provided in the last sentence of § 882.103(c).

(d) *Disapproval Conditional Approval, or Approval of Applications.* If an application is disapproved, HUD shall notify the applicant by letter indicating in detail the reasons for disapproval. If an application can be approved only if certain changes are made, HUD shall notify the applicant by letter

stating that the application can be approved if the PHA adopts, within a reasonable time as determined by HUD, the changes required by HUD. If an application is approved, the applicant shall be sent a notification of application approval.

#### § 882.206 Annual contributions contract; schedule of leasing.

(a) *Transmittal of ACC.* After the HUD field office has prepared the ACC, the ACC shall be transmitted to the PHA for execution by the PHA. The ACC shall be returned to HUD together with the PHA's equal opportunity housing plan, estimates of its financial requirements on the prescribed forms, administrative plan and proposed schedule of Allowances for Utilities and Other Services, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, financial estimates, the administrative plan and the schedule of Allowances for Utilities and Other Services, HUD shall execute the ACC. HUD then shall transmit a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

(c) *Schedule of Leasing.* The ACC shall include a provision relating to expeditious leasing of units under the program. HUD will review the PHA-proposed schedule specifying the number of units that are expected to be leased by the end of each three-month period, and will make such changes as it may deem appropriate. In its transmittal of the ACC to the PHA, HUD will include the HUD-approved schedule. This schedule will be established so as to implement HUD policy that all units in a section 8 Existing Housing program of 100 units or more must be leased by Eligible Families within 12 months. In the case of smaller programs, a shorter time period may be established by HUD. HUD may reduce the number of units and/or the amount of the annual contributions commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or fails to adhere to the schedule for other reasons which justify a reduction in the number of units or changes in unit size.

#### § 882.207 Public notice to lower-income families; waiting list.

(a) *Public Notice to Lower-Income Families.* Promptly after receiving the executed ACC, and thereafter as may be necessary, the PHA shall make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the avail-

ability and nature of housing assistance for lower-income families (including assistance with respect to units already occupied by the families) and the notice shall inform such families where they may apply for Certificates of Family Participation. The PHA shall take affirmative action to provide opportunities to participate in the program to persons who, because of such factors as race, ethnicity, sex of household head, age, or source of income, are less likely to apply for Certificates of Family Participation; and, if there is a Local Housing Assistance Plan pursuant to Title I of the HCD Act, to persons expected to reside in the community because of present or planned employment, as indicated in the plan.

(1) The notice shall also state that occupants of housing assisted under the Act (including leased housing and housing occupied with assistance under the Section 23 Housing Assistance Payments Program), applicants on a waiting list for any such housing, and holders of Certificates of Family Participation for such housing must apply specifically if they wish to be considered for a Certificate of Family Participation under this Part. In addition, the notice shall state that such applicants for Certificates will not lose their place on the public housing waiting list.

(2) Such notice shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(b) *Waiting List.* The PHA shall establish and maintain a waiting list for applicants for Certificates of Family Participation under this Part. If an applicant is determined by the PHA to be eligible but the PHA has determined pursuant to Sec. 882.209(a)(5) that it cannot issue any more Certificates, the PHA shall place such Family on this waiting list and notify the Family of this fact and of the approximate date that a Certificate may be issued, insofar as such date can reasonably be determined.

(c) *Suspension of Taking of Applications.* If the number of Families on the PHA's waiting list for Certificates of Family Participation is such that there is no reasonable prospect that additional applicants could be issued Certificates within the next year, the PHA may determine to suspend the taking of further applications, and in such case the PHA shall not be required to take the actions specified in paragraph (a) of this section. Any such determination by the PHA shall be publicly announced in the same manner as provided in paragraph (a) of this section and shall be effective as

of the date stated in such announcement.

#### § 882.208 Activities to encourage participation by owners and others.

(a) The PHA shall invite Owners, through publication in a newspaper of general circulation as well as through minority media and other suitable means, to make dwelling units available for leasing by Eligible Families, and in doing so, the PHA shall encourage the participation of Owners of units in areas other than low-income or minority concentrated areas. Such invitation shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan, and with the HUD advertising guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan. The PHA shall publicize the needs of the program in such ways as to reach a maximum number of Owners and real estate brokers.

(b) The PHA shall also (1) request the field office to furnish it with a list of Secretary-held properties available for rent, to be included in the Certificate Holder's Packet, (2) develop working relationships with local Owners and real estate broker associations, (3) establish contact with civic, charitable, or neighborhood organizations which have an interest in housing for low-income families, and public agencies concerned with obtaining housing for displacees, and (4) explain the provisions of the program, including equal opportunity requirements, to real estate, landlord, and other groups the members of which have dealings with low-income families or are interested in housing such families.

#### § 882.209 Certificates of family participation.

(a) *Initial Determination of Family Eligibility.* (1) The PHA shall be responsible for determining eligibility for a Certificate of Family Participation, in accordance with schedules and criteria established by HUD. The PHA shall be responsible for verifying the sources of the family's income and other information necessary for determining eligibility and the amount of the assistance payment. If an Owner is the initial point of contact by an applicant who does not have a Certificate, he shall refer such applicant to the PHA.

(2) In issuing the Certificate of Family Participation, the PHA shall enter on the Certificate the smallest unit size consistent with the following criteria:

(i) The bedroom size assigned shall not require more than two persons to occupy the same bedroom.

(ii) The bedroom size assigned shall not require persons of the opposite

sex, other than husband and wife or very young children, to occupy the same bedroom.

(iii) All single person households shall be assigned a 0-bedroom unit if 0-bedroom units are included in the Program as set forth in the ACC or if the individual will reside in an Independent Group Residence. (See § 882.106 (c)(2)(ii).) Where there are no 0-bedroom units in the program or the applicant will not select an Independent Group Residence, single person households shall be assigned a 1-bedroom unit. An elderly, handicapped or disabled single person household planning to live with an unrelated person essential to his or her care may be assigned a 2-bedroom unit.

(iv) The PHA may request variations of these criteria as a part of its administrative plan on the basis of local codes or market conditions which require the adoption of alternative standards. Variations of these criteria must be specifically approved by the HUD Field Office.

(3) The PHA shall select Families for Certificates in accordance with the provisions of this Part and in accordance with the PHA's application, including any PHA rules for preferences as approved by HUD (see § 882.204 (b)(1)(i)(C)). If the PHA has issued a Certificate to an eligible individual residing in an Independent Group Residence, the PHA shall establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a Section 8 recipient in an Independent Group Residence moves. Use of this preference is subject to the availability of funds for appropriately sized units. The Certificate holder given this preference shall select the unit of his or her choice and does not have to reside in the Independent Group Residence in which a vacancy has occurred. Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant for a Certificate of Family Participation, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. (See also § 882.209(e)(2).)

(4) Every applicant for a Certificate shall complete and sign the form of application prescribed by HUD.

(5) The PHA shall maintain a system to assure that it will be able to honor all outstanding Certificates of Family Participation within its ACC



authorization and that it will comply, to the maximum extent feasible, with the unit distribution in the ACC.

(6) PHA records on applicant and certified Families shall be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Issuance of Certificate of Family Participation, and Certificate Holder's Packet.* If an applicant is determined by the PHA to be eligible and is selected for participation, he shall be given a Certificate of Family Participation signed by the PHA. At the same time, the Family shall be given one Certificate Holder's Packet, which shall include:

(1) Request for Lease Approval;  
(2) Required Lease Provisions and Prohibited Lease Provisions (see Appendices I and II);

(3) Information regarding lead based paint poisoning hazards, symptoms and precautions;

(4) The PHA's forms for inspection of housing units.

(5) Fair Housing U.S.A. (HUD-63-EO-(6)), or the Spanish translation thereof (HUD-169-EO-(2)), as appropriate, both issued by the U.S. Department of Housing and Urban Development and the housing discrimination complaint form (HUD-903) or the Spanish translation thereof (HUD-903a);

(6) A list of Secretary-held properties available for rent;

(7) Information concerning Recently Completed Housing, if any, including the locations of such housing and the applicable Fair Market Rents;

(8) Information as to the Gross Family Contribution, the Fair Market Rent appropriate for the Family size and composition, and the benefit of the Rent Credit for rents below the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3);

(9) The PHA's schedule of Allowances for Utilities and Other Services; and

(10) Such other items as the PHA may determine should be included.

(c) *Briefing of Certificate Holders.* When a Family initially receives its Certificate of Family Participation, a full explanation of the following shall be provided to assist the Family in finding a suitable unit and to apprise the Family of its responsibilities and the responsibilities of the Owner (this may be done either in group or individual sessions; adequate opportunity shall be provided for Families to raise questions and to discuss the information provided):

(1) Family and Owner responsibilities under the Lease and Contract;

(2) How to find a suitable unit;

(3) The general locations and characteristics of the full range of neighborhoods in which the PHA is able to

execute Contracts and in which units of suitable price and quality may be found.

(4) Applicable housing quality standards;

(5) Significant aspects of the applicable State and local laws;

(6) Significant aspects of Federal, State and local fair housing laws;

(7) Applicable Fair Market Rent, determination of Gross Family Contribution, establishment of housing assistance payments and operation of the Rent Credit; and

(8) That the family may obtain copies of the Housing Quality Standards, the Contract and other pertinent forms or documents, on request.

(d) *Expiration and Extension of Certificate.* (1) The Certificate of Family Participation shall expire at the end of 60 days unless within that time the Family submits a Request for Lease Approval.

(2) If a Certificate expires or is about to expire, a Family may submit the Certificate to the PHA with a request for an extension. The PHA shall review with the Family the efforts it has made to find a suitable dwelling unit and the problems it has encountered and shall determine what advice or assistance might be helpful. If the PHA believes that there is a reasonable possibility that the Family may, with the additional advice or assistance, if any, find a suitable unit, the PHA may grant one or more extensions not to exceed a total of 60 days. Expiration of a Certificate shall not preclude the Family from filing a new application for another certificate.

(e) *Continued Participation When Assisted Family Moves.* (1) If an assisted Family notifies the PHA that it wishes to obtain another Certificate of Family Participation for the purpose of finding another dwelling unit within the area in which the PHA has determined that it is able to enter into Contracts or that it has found another such unit to which it wishes to move, the PHA shall (unless it does not have sufficient ACC authority for continued assistance to the Family) issue another Certificate of process a Request for Lease Approval, as the case may be, unless the PHA determines that the Owner is entitled to payment pursuant to § 882.112 on account of non-payment of rent or other amount owed under the Lease and that the Family has failed to satisfy any such liability.

(2) If an assisted Family wishes to move out of the area in which the PHA has determined that it is able to enter into Contracts and the Family qualifies under paragraph (e)(1) of this section, the Family may obtain housing assistance in the jurisdiction to which it is moving, provided that the Family obtains a Certificate of

Family Participation from the appropriate PHA. The appropriate PHA shall treat the Family either as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance. In either case the PHA shall not deny the Family a Certificate on the ground that its Income is above limits for admission in that jurisdiction, and any requirements and preferences of the PHA as to admission are subject to the requirements of § 882.209(a)(3).

(f) *Families Determined by the PHA to be Ineligible.* If an applicant is determined by the PHA to be ineligible on the basis of Income or family composition, or for any other reason, the PHA shall promptly notify the applicant by letter of the determination and the reasons therefor, and the letter shall state that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant is ineligible, it shall so notify the applicant in writing. The procedures of this paragraph do not preclude the applicant from exercising its other rights if it believes it is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the notification letters, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

#### § 882.210 Request for lease approval.

(a) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including lease provisions, lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed lease, which shall contain all required provisions shown in Appendix I and shall be complete except for execution and entry of the portion of monthly rental which the Family shall be obligated to pay to the Owner.

(b) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay di-

rectly for any of the utilities or services, the PHA shall determine the amount of the Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(c) *Amount of Rent Payable by Family to Owner.* The amount of rent payable by the Family to the Owner shall be the amount of the Gross Family Contribution, or the amount of such Contribution less the amount of any Allowance for utilities and other services not to be provided by the Owner. If the Family is entitled to a Rent Credit pursuant to § 882.115, the amount of the rent otherwise payable by the Family to the Owner shall be reduced by the amount of the Credit. If the Gross Family Contribution minus the Rent Credit is less than the Allowance for Utilities and Other Services, the PHA shall pay the difference directly to the Family.

(d) *Decent, Safe, and Sanitary Condition of Unit.*

(1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with Sec. 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary.

(3) A report for every inspection and reinspection under this paragraph (d) shall be prepared and maintained in the files of the PHA. Each such report shall specify (i) any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the

Owner that they were caused during the period of occupancy by the Family.

(e) *Oversized Units.* Regardless of the unit size stated on the Certificate, no otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, provided that the rent to Owner plus any Allowance applicable to the actual larger size unit does not exceed the Fair Market Rent, or such higher rent as may previously have been approved by HUD pursuant to § 882.106(a)(3) or (4), for the smaller size unit initially determined appropriate for the Family. Similarly, a unit with fewer bedrooms than the number stated on the Certificate may be approved: *Provided*, That the unit meets the space requirement of § 882.109(c), or such variation as may have been approved by HUD, and the rent to Owner plus any Allowance applicable to the actual smaller size unit does not exceed the Fair Market Rent, or such higher rent as approved by HUD pursuant to § 882.106(a)(3) or (4), for the actual smaller size unit.

(f) *Lease Requirements.* (1) *Term of Lease.* The PHA shall determine that the term of Lease is consistent with Sec. 882.107(b).

(2) *Required Provisions.* The Lease shall contain the required provisions specified in Appendix I. Leases for Independent Group Residences shall also incorporate by reference the supportive services to be provided in accordance with the written Service Agreement between the Owner and the Service Agency and/or other entities providing the necessary supportive services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease. This Service Agreement or pertinent Lease provisions shall be approved in writing by the State prior to PHA execution of the Contract. (See §§ 882.102 and 882.109(n)(6).)

(3) *Prohibited Provisions.* The Lease shall not contain any clause which falls within the classifications listed in Appendix II.

(g) *Approval of Lease and Execution of Related Documents.* (1) If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed lease complies with the requirements of this part, the PHA shall notify the Owner and the Family of its determination of Lease approval, prepare the Contract, enclose a copy of the lease to be executed and furnish two copies of the Contract to the Owner.

(2) After notification: (i) The Family and the Owner shall execute the Lease and return a copy to the PHA; (ii) The

Owner shall sign and return both copies of the Contract to the PHA; (iii) The PHA shall execute the Contract and return an executed copy to the Owner.

(3) The PHA shall retain in its files the following: The Request for the Lease Approval, the approved Lease, the inspection report(s), the certification pursuant to § 882.106(b) that the rent is reasonable and not in excess of rents currently being charged by the Owner for comparable unassisted units, and the executed Contract.

(h) *Disapproval of lease.* (1) If the PHA determines that the lease cannot be approved for any reason, including the condition of the unit, the PHA shall so notify the Owner and the Family that:

(i) The proposed lease and/or the proposed dwelling unit are/is disapproved, for specified reasons; and that,

(ii) If the conditions requiring disapproval are remedied, and a Request for Lease Approval is resubmitted on or before a specified date, the Lease will be approved if the PHA determines that the conditions have been remedied to its satisfaction;

(2) The Certificate of Family Participation shall not expire before the date specified pursuant to paragraph (h)(1)(ii) of this section.

(3) The PHA shall retain in its files the following: the Request for Lease Approval, the inspection report(s), if any, and the notification of disapproval of the lease.

#### § 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.210(d)(1), the PHA will inspect or cause to be inspected each dwelling unit leased to an Eligible Family at least annually and at such other times as may be necessary to assure that the Owner is meeting his obligations to maintain the unit in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the PHA's housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has failed to maintain a dwell-



ing unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA determines to terminate the Housing Assistance Payments Contract, the PHA shall issue to the Family another Certificate of Family Participation.

**§ 882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.**

Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the PHA at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly families), and appropriate redeterminations shall be made by the PHA of the amount of Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD. A Family's eligibility for housing assistance payments shall continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rents or other relevant circumstances during the term of the Contract. If the Contract terminates at a time when the Family is ineligible for payments the Contract shall not be renewed. In addition, if one year has elapsed since the date of the last housing assistance payment, the Contract shall be terminated (with the consent of the Owner if the Contract does not provide for termination under such circumstances) even if the termination date has not yet been reached. A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

**§ 882.213 Overcrowded or under occupied units.**

If the PHA determines that a dwelling unit is not Decent, Safe, and Sanitary by reason of increase in Family size, or the Family is residing in a unit larger than appropriate because of a reduction in Family size and the Gross Rent exceeds the Fair Market Rent

for the unit size appropriate for the Family size, the PHA shall issue the Family a new Certificate and the Family and PHA shall try to find an acceptable unit as soon as possible. If an acceptable unit is found that is available for occupancy by the Family, and the Lease with the first Owner can be terminated in accordance with its terms, the Contract with the first Owner shall be terminated and housing assistance payments shall be made available to the Family for occupancy in the acceptable unit. Housing assistance payments will not be terminated unless the Family's Certificate has expired and the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

**§ 882.214 Adjustment of allowance for utilities and other services.**

(a) *Annual Review.* At least annually, the PHA shall determine whether there has been a substantial change in utility rates or other charge of general applicability, and whether an adjustment is required in the Allowance of Utilities and Other Services by reason of such changes or because of errors in the original determination. If the PHA determines that an adjustment should be made, the PHA shall establish a schedule of adjustments taking into account size and type of dwelling units and other pertinent factors and shall furnish HUD with a copy of the adjusted schedule.

(b) *Adjustments in Payments Under Contracts in Effect.* The PHA shall determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and shall notify the Owners and Families accordingly.

(c) *Effect on Fair Market Rents.* If the PHA finds that utility cost changes are causing substantial difficulties in leasing Decent, Safe and Sanitary housing within the existing Fair Market Rent limitations, the PHA shall furnish appropriate documentation to HUD with a request for consideration of the need for a change in the Fair Market Rents.

**§ 882.215 Eviction.**

The Owner shall not evict any Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner. The Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also

state that the Family may, within the same period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of the notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

**§ 882.216 Inapplicability of low-rent public housing model lease and grievance procedures.**

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are not applicable to the Section 8 Housing Assistance Payments Program under this Part.

**§ 882.217 HUD review of contract compliance.**

HUD will review program operations at such intervals as it deems necessary to ensure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

**§ 882.218 PHA reporting requirements. [Reserved]**

**APPENDIX I**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING

**Required lease provisions**

The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

**ADDENDUM TO LEASE**

The following additional Lease provisions are incorporated in full in the Lease between ——— (Lessor) and ——— (Lessee) for the following dwelling unit: ———. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

- a. The total rent shall be \$ ——— per month.
- b. Of the total rent, \$ ——— shall be payable by the Public Housing Agency (PHA) as housing assistance payments on behalf of the Lessee and \$ ——— shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established

established schedules and criteria; or by reason of adjustment by the PHA of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall provide the following utilities: [Specify].

d. The Lessor shall provide maintenance and services as follows:

(1) The Lessor shall maintain the dwelling unit and all equipment provided therewith, as well as common areas, facilities and equipment provided for the use and benefit of the Lessee, in compliance with the Housing Quality Standards on the basis of which this Lease was approved by the Public Housing Agency, and the Lessor shall respond in a reasonable time to calls by the Lessee for services consistent with said obligation. Where applicable (as in case of multi-unit buildings), such maintenance with respect to common areas, facilities and equipment shall include cleaning; maintenance of lighting and equipment; maintenance of grounds, lawns and shrubs; and removal of snow and ice. Where security equipment and services are to be provided by Lessor they are as follows: [Specify, or state "None"].

(2) Extermination services shall be provided by Lessor as conditions may require. If such service it to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

(3) Repainting shall be provided by Lessor as conditions may require. If such service is to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

e. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor. Because the Lessor must obtain the PHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the lease. The PHA shall notify the Lessor and the Lessee of its determination within 20 days of the date of

the notice to the Lessee, whether or not the Lessee has presented objections to the PHA. If the Lessor has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Lessor that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

f. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

(g)(1) This Lease shall not become effective unless the PHA has executed a Housing Assistance Payments Contract with the Lessor by the first day of occupancy specified in the Lease.

(2) This Lease shall terminate upon the date of any termination of the Housing Assistance Payments Contract, including any termination due to termination of eligibility of the Lessee. In the event that the PHA determines, after having given the Lessee reasonable notice (with a copy to the Lessor) and opportunity to respond, that the Lessee is ineligible for further housing assistance payments because of failure to comply with the Lessee's obligations under the Certificate of Family Participation, the PHA shall notify the Lessor and the Lessee of such determination. Such determination shall be grounds for termination of this Lease by the Lessor.

Lessor \_\_\_\_\_  
By \_\_\_\_\_  
Date \_\_\_\_\_  
Lessee \_\_\_\_\_  
Date \_\_\_\_\_

**APPENDIX II**

**SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING**

**Prohibited lease provisions**

Lease clauses which fall within the classifications listed below shall not be included in any Lease in this program.

1. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

2. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which

the landlord has determined the tenant has failed to perform.

3. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

6. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal cost whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of this clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

(Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 25, 1978.

LAWRENCE B. SIMONS,  
Assistant Secretary for Housing,  
Federal Housing Commissioner.  
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| 4395-4808    | 25     | 21467-21602 | 27     | 38551-38889 | 29      |
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| 7121-7917    | 7      | 23597-23794 | 10     | 40677-40845 | 11      |
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| 8361-8628    | 10     | 24229-24709 | 13     | 41265-41399 | 16      |
| 8629-9012    | 11     | 24711-25312 | 16     | 41401-41602 | 17      |
| 9013-9152    | 14     | 25313-25485 | 17     | 41603-41812 | 18      |
| 9153-9373    | 15     | 25487-25717 | 18     | 41813-42183 | 19      |
| 9375-9655    | 16     | 25719-25848 | 19     | 42185-42297 | 22      |
| 9657-9986    | 17     | 25849-26194 | 20     | 42299-42676 | 23      |
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| 13103-13263  | 9      | 29471-29840 | 9      | 45625-45891 | 12      |
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